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1 Okay, it's 1:00 o'clock. Let's recess
 2 until 2.
 3 (Whereupon, at 1:00 p.m., the hearing was
 4 recessed, to reconvene at 2:00 p.m.)
 5 JUDGE VON KANN: Okay. Let's see, do we
 6 -- Mr. Olaniran is not here, but -- okay. I guess we
 7 have everybody. All right. Mr. Cooper?
 8 MR. COOPER: Good to see you again, Your
 9 Honor.
 10 JUDGE VON KANN: Good to see you.
 11 WHEREUPON,
 12 JUDITH ALLEN
 13 was called as a witness by Counsel for the Joint
 14 Sports Claimants and, having been first duly sworn,
 15 assumed the witness stand, was examined and testified
 16 as follows:
 17 DIRECT EXAMINATION
 18 BY MR. COOPER:
 19 QGood afternoon, Ms. Allen. Could you give
 20 your name and your current employer?
 21 AMy name is Judith Allen, and I work for
 22 NAREX.

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1 QAnd can you just tell the Panel what NAREX
 2 is?
 3 AIt's a specialized software company based
 4 in Golden, Colorado.
 5 QAnd when did you start working for NAREX?
 6 AIn January of this year.
 7 QPrior to that, where did you work?
 8 AI had my own consulting company
 9 specializing in marketing and programming issues to
 10 the cable television industry, Allen Strategies.
 11 QAnd what types of clients did Allen
 12 Strategies have?
 13 AFox Cable Networks, Women in Cable and
 14 Telecommunications, and the Cable Television
 15 Association for Marketing.
 16 QCan you just summarize the kinds of
 17 projects that Allen Strategies did for those clients?
 18 AThere was a range of projects from
 19 designing sales training for vendors to the cable
 20 industry to understand how operators think and work
 21 better, as well as rebranding and repositioning some
 22 industry organizations.

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1 QPrior to Allen Strategies, where were you
 2 employed?
 3 AI worked for Media One.
 4 QOkay. And when did you leave Media One
 5 and start Allen Strategies?
 6 AIn August of 2000 when Media One was
 7 purchased by AT&T Broadband.
 8 QOkay. So focusing now on your time at
 9 Media One, when did you start at Media One?
 10 AOn March 1, 1998.
 11 QOkay. And when you started at Media One,
 12 what was your position?
 13 AI was hired to be Senior Vice President of
 14 Marketing.
 15 QAnd what did that position -- what were
 16 the responsibilities in that position?
 17 AThe acquisition and retention of
 18 subscribers, the introduction of new products, the
 19 overall branding, positioning, and advertising, and
 20 various strategic issues related to the marketing of
 21 the cable television company.
 22 QOkay. Just so the Panel has some
 1 background, can you explain how big Media One was or
 2 give them some background on Media One?
 3 AYes, we were the third largest cable
 4 operator at the time and had about five million
 5 subscribers.
 6 QOkay. You mentioned your position when
 7 you came into Media One. At any point during your
 8 time there did your position change?
 9 AYes. Several months later I was asked to
 10 take over the programming responsibilities in addition
 11 to the marketing responsibilities, and my title
 12 changed to Senior Vice President of Video.
 13 QAnd can you just describe what --
 14 AYes.
 15 Q-- the programming responsibilities that
 16 you took on?
 17 AThat meant I was responsible for all of
 18 the negotiations with all of the programming vendors
 19 to Media One, and all of our contractual relations,
 20 and essentially approving the channel lineups
 21 throughout the company.
 22 QSo that would be for all of the systems

<p style="text-align: right;">Page 6006</p> <p>1 within the Media One family?</p> <p>2 ARight.</p> <p>3 QOkay. Prior to your time at Media One, so</p> <p>4 I guess we're going back to prior to March of 1998,</p> <p>5 where were you employed?</p> <p>6 AI spent a little over five years at</p> <p>7 Century Communications. That was from 1992 to early</p> <p>8 '98. And there I had marketing and programming</p> <p>9 responsibilities similar to what I described at Media</p> <p>10 One.</p> <p>11 QAnd can you just give the Panel a little</p> <p>12 bit of background about Century?</p> <p>13 AYes. Century had, when I started, a</p> <p>14 little over a million subscribers. It grew through</p> <p>15 acquisition to almost a million and a half</p> <p>16 subscribers. It was the tenth largest MSO at the</p> <p>17 time, although there were a lot of changes going on in</p> <p>18 the industry over those years. But about a million to</p> <p>19 a million and a half subscribers.</p> <p>20 QWere there any differences in your</p> <p>21 responsibilities at Century than at Media One?</p> <p>22 AWhen I started at Century, I was in charge</p>	<p style="text-align: right;">Page 6008</p> <p>1 QAnd can you just tell us -- I see you have</p> <p>2 the Joint Sports case in front of you. Can you tell</p> <p>3 us at which tab your testimony appears?</p> <p>4 ATab I.</p> <p>5 MR. COOPER: Is there any voir dire? No?</p> <p>6 Okay.</p> <p>7 BY MR. COOPER:</p> <p>8 QMs. Allen, I'd like to just hit some of</p> <p>9 the highlights of your testimony. If you turn to</p> <p>10 page 4, the first full paragraph there, referring to</p> <p>11 the Bortz survey you say, "The results of these</p> <p>12 surveys are consistent with my experience in the cable</p> <p>13 television industry." Can you explain that statement,</p> <p>14 the basis of that statement?</p> <p>15 AYes. In my experience in the industry,</p> <p>16 the primary reason that distant signal channels were</p> <p>17 imported was for their sports programming.</p> <p>18 QAnd have you reviewed the Bortz survey</p> <p>19 results?</p> <p>20 AI have.</p> <p>21 QOkay. And I think in the sentence below</p> <p>22 the one I read you talk about those results as</p>
<p style="text-align: right;">Page 6007</p> <p>1 of marketing and public affairs, public affairs</p> <p>2 specifically being designing programs to help the</p> <p>3 company be more favorably viewed by franchise</p> <p>4 authorities and other local officials in local</p> <p>5 communities. And then I grew in my time there to add</p> <p>6 programming responsibilities, and then the latter half</p> <p>7 of my time there I was responsible for both marketing</p> <p>8 and programming.</p> <p>9 QPrior to Century, where were you employed?</p> <p>10 AI spent three years at USA Network, which</p> <p>11 is a major cable network, where I was Vice President</p> <p>12 of Affiliate Relations.</p> <p>13 QCan you explain what affiliate relations</p> <p>14 is?</p> <p>15 AYes. That is a job that is responsible</p> <p>16 for the relationships with cable operators,</p> <p>17 essentially selling to and having ongoing</p> <p>18 relationships with cable operators, including</p> <p>19 negotiating contracts for carriage.</p> <p>20 QHave you submitted written testimony in</p> <p>21 connection with this proceeding?</p> <p>22 AI have.</p>	<p style="text-align: right;">Page 6009</p> <p>1 approximately 40 percent related to Joint Sports</p> <p>2 Claimants programming, do you see that?</p> <p>3 AYes.</p> <p>4 QIs that consistent with your experience?</p> <p>5 AYes.</p> <p>6 QHave you ever personally been surveyed as</p> <p>7 part of the Bortz survey?</p> <p>8 ANo, I never have.</p> <p>9 QWere you aware of the survey in the</p> <p>10 industry before you got involved in this case?</p> <p>11 AFrankly, no, I was not.</p> <p>12 QIf you look at the bottom -- well, let me</p> <p>13 ask you -- well, that's fine. Look at the bottom of</p> <p>14 page 4, that paragraph that begins at the bottom. And</p> <p>15 in the first sentence, the second phrase there, sports</p> <p>16 programming is the most valuable type of distant</p> <p>17 signal programming because it attracts and retains</p> <p>18 subscribers to a greater degree than any other type of</p> <p>19 distant signal programming. Do you see that?</p> <p>20 AYes.</p> <p>21 QAnd can you explain what you mean by that?</p> <p>22 AWell, the way we value and make decisions</p>

<p style="text-align: right;">Page 6010</p> <p>1 about putting channels on or keeping channels on a 2 lineup has everything to do with their ability to 3 attract and retain subscribers. And it's my 4 experience that sports fans are extremely avid about 5 their fandom, fandom. That's not really a word, but 6 you understand what I mean.</p> <p>7 And people are very loyal to their teams, 8 and watching every game they can see live is terribly 9 important. Therefore, sports programming, which is 10 live and unique and never can be predicted what the 11 outcome will be, is very, very valuable to our 12 subscribers, and, therefore, to cable operators.</p> <p>13 Q How do cable operators become aware that 14 it's valuable to subscribers?</p> <p>15 A Well, I think in a variety of ways, but 16 our primary methods are listening to our subscribers 17 who call in to our customer service centers on a 18 regular basis, and sometimes our subscribers contact 19 city officials, because we have local franchise 20 agreements in all of the communities in which we 21 serve. So we care very much that our local officials 22 are happy and they listen to their constituents.</p>	<p style="text-align: right;">Page 6012</p> <p>1 -- I mean, I think that's a fair point. So I'm 2 generalizing to say that you cannot say all fans are 3 the same. So I shouldn't have made that point, if I 4 gave that sense. But I think they're a large 5 category, and I think that in terms of television 6 programming even your friends who don't have to watch 7 every game like knowing that many games are available, 8 and, therefore, when they want to, what they want to 9 watch is available.</p> <p>10 BY MR. COOPER: 11 QAre you a big sports fan yourself? 12 AActually, I'm not. 13 QOkay. So I take it, then, that the basis 14 is not -- of these statements is not your own personal 15 experience, apart from your experience as a 16 programming? 17 AVery much it's not my personal experience. 18 QOkay. 19 AI will confess that I'm a big Colorado 20 Avalanche fan, but I'm not a huge sports fan in 21 general. 22 QIf you could turn to page 7 of your</p>
<p style="text-align: right;">Page 6011</p> <p>1 JUDGE YOUNG: When you say "sports fans 2 are very avid," do you mean -- are you describing all 3 sports fans, or are you describing a subset of sports 4 fans?</p> <p>5 THE WITNESS: Well, I imagine in any 6 category of fans there is more avid and less avid. 7 But I think the sports fans are a large category, 8 first of all, and I think they really have a great 9 appetite for regular consumption of the live 10 programming that -- you know, of what their team is 11 doing. Did that answer your question?</p> <p>12 JUDGE YOUNG: It answers it. I mean, the 13 reason I'm looking at you with somewhat of a quizzical 14 look is I'm trying to sort of experience -- think 15 about it from personal experience. And there are many 16 individuals, mostly men I know, who are sports fans. 17 But I would not say they would all think of themselves 18 as sports fans, and they would all occasionally watch 19 games. But I'm not sure all of them would 20 characterize themselves as having to watch every game 21 or, you know, very intense, etcetera.</p> <p>22 THE WITNESS: Right. And I think that's</p>	<p style="text-align: right;">Page 6013</p> <p>1 testimony, which is in the part of the testimony where 2 you're discussing the impact of the Cable Act, the 3 1992 Cable Act. There's a discussion on page 7 about 4 must-carry and the relationship between that and 5 issues about capacity and the dropping of distant 6 signals. Could you just explain the relationship 7 between the must-carry regulations and dropping of 8 distant signals?</p> <p>9 A Sure. Broadcast over-the-air stations are 10 all carried on the lowest level of service on a cable 11 system, generally called limited basic. It has other 12 names, but that would be a good characteristic for it. 13 That's where distant signals are also carried.</p> <p>14 So when must-carry regulations came into 15 place and new broadcasters asked to be placed on a 16 cable system and they hadn't been placed before, we 17 suddenly hit a crunch period in terms of the channels 18 allocated to that lowest level of service. So there 19 were times that distant signals had to be dropped in 20 order to make space for must-carry broadcasters.</p> <p>21 Q Let me try to unpack a couple of the 22 things that you talked about there. One is just the</p>

<p style="text-align: right;">Page 6014</p> <p>1 notion of capacity, and there's been some testimony in 2 the hearings about capacity. Could you talk about 3 capacity on the limited basic, I think you called it? 4 Can you just explain the concept of capacity 5 generally, and then what you meant by capacity on the 6 limited basic tier?</p> <p>7 A Well, there's a technical definition of 8 "capacity," which is depending on the technical 9 configuration of a cable system and how many megahertz 10 it's built to, there is only a certain number of video 11 channels that can be put through a certain size of 12 cable system, and cable systems vary in their sizes. 13 So there are some technical limitations about capacity 14 that have everything to do with how many channels 15 could physically be sent over the pipe, if you will.</p> <p>16 Another way to think about capacity is a 17 strategic decision that the company might make about 18 how many channels you want to offer in certain 19 categories or tiers of programming, as well as when 20 you look at the entire pipe how much is allocated to 21 video, how much is allocated to telephony, either 22 currently or in the future, how much is allocated to</p>	<p style="text-align: right;">Page 6016</p> <p>1 system, it's an expense to move them. So changing the 2 size of the lowest level of service would be a 3 business expense that would be onerous, and you'd 4 prefer not to do it.</p> <p>5 QOkay. Can you -- this may follow up on 6 what you just said. But you mentioned that if a 7 broadcast station elected must-carry, you might have 8 to drop a distant signal. Why not just move the 9 distant signal you are carrying somewhere else in your 10 system's capacity?</p> <p>11 AWell, if you could do it technically and 12 keep it in limited basic, you might do that.</p> <p>13 JUDGE YOUNG: At great cost, you're 14 saying.</p> <p>15 THE WITNESS: Well, actually, within -- if 16 limited basic is 20 channels, and you have a trap 17 above channel 20, then, no, moving things within there 18 is not great cost. Making them --</p> <p>19 JUDGE YOUNG: But it's very close to 20 making --</p> <p>21 THE WITNESS: Making it 21 --</p> <p>22 JUDGE YOUNG: Right.</p>
<p style="text-align: right;">Page 6015</p> <p>1 high speed data internet access, how much to future 2 video on demand and other kinds of services.</p> <p>3 Q And then, following up on your discussion 4 about the limited basic tier and the capacity on that 5 tier, can you just explain what you meant by that?</p> <p>6 A Yes. That is a level of service that we, 7 as cable operators, were required to offer but never 8 actively marketed because we preferred that our 9 customers buy the portally named bigger basic. I 10 mean, we have some problems with nomenclature around 11 basic, but generally it was known as limited expanded 12 basic. And we would obviously prefer that customers 13 buy a much larger package of channels.</p> <p>14 And so the limited basic was available, 15 but we would try to, frankly, minimize its appeal. 16 And technically, it's created by -- do you want to 17 know how -- technically, it's created by purchasing a 18 trap and blocking out. If someone just wants limited 19 basic, then we have a technical way to make sure they 20 can't see anything else.</p> <p>21 So once those traps are built, it's very 22 -- once those traps are purchased and placed in the</p>	<p style="text-align: right;">Page 6017</p> <p>1 THE WITNESS: -- that's great cost. And 2 the reason you wouldn't put a distant signal up in 3 expanded basic is that we are required, under 4 copyright rules, to pay the gross receipts based on 5 the level of service that that channel is on. So 6 that's why distant signals are always, or most often, 7 placed on the lowest level of service.</p> <p>8 MR. COOPER: Thank you. I have nothing 9 further.</p> <p>10 JUDGE VON KANN: Okay. I don't know if 11 there's been some agreement as to order of proceeding, 12 but --</p> <p>13 MR. ESKAY: Your Honor, Robert Eskay for 14 Program Suppliers. We have no questions of this 15 witness.</p> <p>16 JUDGE VON KANN: Okay. Mr. Dove, Mr. 17 Mause, do you want to precede or follow Mr. Stewart? 18 Or has there been agreement about that?</p> <p>19 MR. MAUSE: Follow. I'd just as soon 20 follow.</p> <p>21 JUDGE VON KANN: All right. Well, okay.</p> <p>22 CROSS EXAMINATION</p>

<p style="text-align: right;">Page 6018</p> <p>1 BY MR. STEWART:</p> <p>2 QGood afternoon, Ms. Allen. My name is</p> <p>3 John Stewart, and I'm representing the Commercial</p> <p>4 Television Claimants in this proceeding.</p> <p>5 AHi.</p> <p>6 QDo you understand what the Commercial</p> <p>7 Television Claimants in this proceeding are asking</p> <p>8 for?</p> <p>9 AI think so. Should I tell you?</p> <p>10 QSure.</p> <p>11 AYou want recognition for the value of</p> <p>12 local news and other programming on local television</p> <p>13 stations that are imported as distant signals.</p> <p>14 QThat's very close. In fact, it's</p> <p>15 completely close. That's very good.</p> <p>16 Who asked you to address the particular</p> <p>17 subjects that you address in your written testimony?</p> <p>18 AOkay.</p> <p>19 QWho asked you that?</p> <p>20 AWho asked me?</p> <p>21 QYes.</p> <p>22 AI think they were my answers to questions</p>	<p style="text-align: right;">Page 6020</p> <p>1 QDo you have a specific idea in mind about</p> <p>2 how to take your testimony and translate it into some</p> <p>3 factor that the Panel would use in determining how</p> <p>4 much royalties should go to which claimant group?</p> <p>5 AI'm not a legal expert, I'm not a lawyer,</p> <p>6 and I didn't, you know, map any strategy here for</p> <p>7 anybody.</p> <p>8 QOkay. Now, you are aware, are you not,</p> <p>9 that the last time this case was litigated was for the</p> <p>10 years 1990 through 1992?</p> <p>11 AYes.</p> <p>12 QAnd this case is about 1998 and 1999?</p> <p>13 AYes.</p> <p>14 QAnd, in fact, if you turn to page 3 of</p> <p>15 your testimony, at the bottom there, do you see that?</p> <p>16 You talk about having reviewed results of five</p> <p>17 particular years worth of Bortz studies. Did you</p> <p>18 select those years?</p> <p>19 ANo.</p> <p>20 QOkay. But those are the years that cover</p> <p>21 the last proceeding and this proceeding. Do you</p> <p>22 understand that?</p>
<p style="text-align: right;">Page 6019</p> <p>1 that were posed to me by the attorneys for the Joint</p> <p>2 Sports Claimants.</p> <p>3 QSo the idea to address the impact of the</p> <p>4 1992 Cable Act came from counsel or claimants and not</p> <p>5 you yourself?</p> <p>6 AAs I recall, it actually came from me in</p> <p>7 our first discussion.</p> <p>8 QAnd what was your reason, then, for</p> <p>9 suggesting that that subject be covered here?</p> <p>10 AWell, we were generally discussing changes</p> <p>11 in the cable industry and things that had strongly</p> <p>12 impacted programming decisions and strategy around</p> <p>13 customer offerings in the cable television industry.</p> <p>14 QOkay. What relevance, in your view, does</p> <p>15 that discussion have to the job of allocating</p> <p>16 royalties among the claimant groups in this</p> <p>17 proceeding?</p> <p>18 AWell, I think it helps to -- as I</p> <p>19 understand it, there are some -- I think it helps to</p> <p>20 understand why decisions are made and how programming</p> <p>21 executives such as myself make decisions about what's</p> <p>22 included and what's not included.</p>	<p style="text-align: right;">Page 6021</p> <p>1 AYes, I do.</p> <p>2 QNow, on page 4 of your testimony, you talk</p> <p>3 about, as you discussed with Mr. Cooper, your view</p> <p>4 that the results of the survey are consistent with</p> <p>5 your own experience in the cable television industry,</p> <p>6 correct?</p> <p>7 AYes.</p> <p>8 QAnd in particular, the Bortz survey result</p> <p>9 for 1998 and '99 would allocate roughly 39 or 40</p> <p>10 percent to live sports telecasts on distant signals,</p> <p>11 correct?</p> <p>12 ACorrect.</p> <p>13 QNow, that's not 100 percent of the value,</p> <p>14 is it?</p> <p>15 ANo, it's not.</p> <p>16 QAnd it is the case, is it not, that</p> <p>17 different cable communities and different cable</p> <p>18 markets might have differing valuations of the various</p> <p>19 program categories.</p> <p>20 AThat's correct.</p> <p>21 QBecause every cable operator's principal</p> <p>22 job is to attract as many subscribers within the</p>

<p style="text-align: right;">Page 6022</p> <p>1 community as possible and maximize the revenue from 2 those subscribers, correct? 3 AI would agree with that. 4 QAnd you wouldn't be surprised, would you, 5 to learn that some of the respondents in the Bortz 6 survey ranked other program categories higher than 7 sports? 8 AI imagine -- no, I wouldn't be surprised. 9 The Bortz survey gave you the statistically valid 10 results of answers from a lot of people, so I wouldn't 11 expect them all to answer the same. 12 QAnd now, in your view, would it be fair to 13 use the 40 percent number as a basis for allocating 14 royalties to sports in this case? 15 AIn my view, it would be. 16 QWould it be fair as well to use the Bortz 17 results with respect to other categories? 18 ASure. 19 QAre you a cable subscriber, by the way? 20 AYes, I am. 21 QAnd you're not a sports fan? 22 AI told you with the exception of the</p>	<p style="text-align: right;">Page 6024</p> <p>1 (Laughter.) 2 PARTICIPANT: Just answer the right way. 3 (Laughter.) 4 JUDGE VON KANN: Just say, "Everything you 5 said is true," and it'll go much faster. 6 BY MR. STEWART: 7 QAt the bottom of page 4 and leading over 8 to the top of page 5 of your testimony, you talk there 9 about how cable systems can't insert advertising into 10 distant signals, is that right? 11 AThat's correct. 12 QAnd that's as a matter of law, they're 13 prohibited from doing so? 14 AYes. 15 QOkay. And why do you bring that point to 16 our attention? 17 ABecause it isolates the value. Selling 18 advertising is just one factor that can be used in 19 trying to value channels that are put on or not put on 20 a cable system. And it just isolates the fact that 21 you really would have to look only at the programming 22 that's on a distant signal because there wouldn't be</p>
<p style="text-align: right;">Page 6023</p> <p>1 Colorado Avalanche, yes. 2 QAre they a sports team? 3 (Laughter.) 4 QI actually meant to ask you, what kind of 5 team are they? 6 AThey're a hockey team, and their star 7 goalie just retired. But that's okay. 8 BY MR. STEWART: 9 QDidn't they use to be from somewhere else? 10 AYes. 11 QAre they the Atlanta team or the Canadian 12 team? 13 AThey were a Canadian team. 14 QYes, okay. 15 AI'm guessing this is not relevant, but 16 that's okay. 17 QJust trying to make conversation. 18 (Laughter.) 19 PARTICIPANT: He's got three hours. 20 THE WITNESS: Okay. 21 MR. STEWART: I'm not going to take three 22 hours, I pledge. But I need your help.</p>	<p style="text-align: right;">Page 6025</p> <p>1 any -- and how that impacts your ability to attract 2 and retain subscribers, because there wouldn't be any 3 other financial benefit, potential financial benefits 4 from carrying it. 5 QAnd that's as distinct from cable networks 6 such as ESPN or CNN or A&E? 7 AThat's right. 8 QWhich offer advertising avails to the 9 cable operators, correct? 10 AThat's right. 11 QSo in terms of determining the potential 12 value -- overall value to the cable operator with 13 respect to cable networks that offer advertising 14 availabilities, you'd have to look at both the appeal 15 of the programming to subscribers and potential 16 advertising revenue? 17 AWell, the former is much, much more 18 important than the latter. But advertising revenue is 19 -- can be a factor. 20 QNow with respect to distant signals where 21 there is no advertising revenue to the cable operator, 22 would it be important for the cable operator to</p>

<p style="text-align: right;">Page 6026</p> <p>1 evaluate the viewing done by subscribers to programs 2 on distant signals? 3 ADo you mean viewing in terms of measured 4 by ratings? 5 QLet's start there, yes. 6 AOkay. I think that measuring the ratings 7 is a factor and not the driving factor in evaluating 8 whether to carry a channel. 9 QHow is it a factor? 10 AWell, it's an input into trying to assess 11 how important that channel is to your existing 12 subscriber base and your potential subscriber base. 13 QLet's assume that we have -- that a cable 14 operator is confronting a decision about whether to 15 add a distant signal from the next market over. What 16 ratings data would a cable operator typically look at 17 in making that kind of a decision, if any? 18 AI mean, possibly they'd look at how 19 popular that channel is in its local market, because 20 that would be the only data I believe that would be 21 available. 22 QPopular, in what sense?</p>	<p style="text-align: right;">Page 6028</p> <p>1 QGoing back just a moment, are you aware of 2 any cable operator that has looked at viewing studies 3 from a distant market in determining whether to carry 4 a particular distant signal? 5 ANo. 6 QOkay. Now, on page 5, further down, you 7 talk about the sports programming on WGN. Do you see 8 that? 9 AYes. 10 QAnd I'm going to focus with you on your 11 experience at Century, because that experience 12 actually spans the exact period of time that we're 13 interested in this proceeding -- that is, from 1992 to 14 1998, okay? 15 AOkay. 16 QNow, you talk about how WGN is a very 17 popular distant signal, correct? 18 ACorrect. 19 QAnd you talk about the Cubs and the White 20 Sox and the Bulls telecasts there, correct? 21 AYes. 22 QNow, did all of the Century systems during</p>
<p style="text-align: right;">Page 6027</p> <p>1 AWell, ratings data measures, you know, 2 viewership. And so I don't think that is commonly 3 used, but it could be used. You could look at, what 4 are the local news ratings for that channel in its 5 local market if you were considering bringing in -- 6 importing it into your system? 7 QHave you ever looked at ratings from a 8 distant market in determining whether a system should 9 add a distant signal from another market? 10 ANot that I'm aware of. 11 QAnd if it were -- if I were to tell you 12 that there was a viewing study in this proceeding that 13 showed that all of -- among all of the distant signals 14 studied, the percentage of total viewing attributable 15 to the sports programs was about seven and a half 16 percent in one year and nine percent in the other 17 year, how would you interpret that data in terms of 18 the value of the distant signal to the cable operator? 19 AI would say that sports is an example of 20 a category where the actual viewing amount and sheer 21 number of hours that it's on is not proportional to 22 its perceived value by subscribers.</p>	<p style="text-align: right;">Page 6029</p> <p>1 your tenure there carry WGN as a distant signal? 2 AI would guess no. 3 QDo you know how many of them did? 4 AI really don't. 5 QWhy not? Were you not responsible for 6 making programming decisions on the Century systems 7 during that period of time? 8 AI was, but there were a lot of systems, 9 and so I couldn't speak intelligently to percentages 10 of carriage of any network. 11 QAnd you didn't go out of your way to say, 12 "WGN is a big sports station. Let's make sure we 13 deliver WGN to our cable subscribers. Let's add it to 14 our systems." 15 ANo, I did not do that. 16 QOkay. Are you aware of any changes that 17 occurred on WGN between -- over the period of '92 to 18 '98 with respect to the sports programming on the 19 station? 20 AI think they lost, and I couldn't tell you 21 the year, but I have some recollection of them getting 22 fewer games at some point.</p>

<p style="text-align: right;">Page 6030</p> <p>1 QOkay. Fewer games of what sport?</p> <p>2 ABaseball I think.</p> <p>3 QDo you know how many fewer?</p> <p>4 AI don't recall the specific number.</p> <p>5 QHow about basketball? Are you aware of</p> <p>6 any changes that happened with respect to the</p> <p>7 basketball games on WGN during this period?</p> <p>8 AWe've already acknowledged I'm not a big</p> <p>9 sports fan, but I think that that was one of Michael</p> <p>10 Jordan's retirement periods.</p> <p>11 QDo you know whether the games were reduced</p> <p>12 over this period of time?</p> <p>13 AI don't recall that.</p> <p>14 QAre you aware of the lawsuit that had to</p> <p>15 do with restricting the number of games -- of those</p> <p>16 games that could be shown on WGN?</p> <p>17 ANo, I don't recall that.</p> <p>18 QIn general, are you aware that the sports</p> <p>19 teams and leagues have pursued a number of different</p> <p>20 ways of trying to reduce the number of games that are</p> <p>21 shown on distant signals available with cable</p> <p>22 television?</p>	<p style="text-align: right;">Page 6032</p> <p>1 QDid you pay any attention to how many</p> <p>2 baseball games you would get with TBS as a cable</p> <p>3 network?</p> <p>4 AI imagine it was discussed. I don't</p> <p>5 remember anything specific about it. I don't remember</p> <p>6 it being a major factor.</p> <p>7 QOkay. Do you know what a regional sports</p> <p>8 network is?</p> <p>9 AOh, yes, I do.</p> <p>10 QAnd why do you know that?</p> <p>11 ABecause I've negotiated with them, and I</p> <p>12 did some work for Fox Cable Networks. And I've been</p> <p>13 in the industry for a lot of years.</p> <p>14 QAnd could you describe what they are,</p> <p>15 please?</p> <p>16 AThey are regionally-based channels that</p> <p>17 primarily focus on live games and the analysis of</p> <p>18 those live games.</p> <p>19 QSo they --</p> <p>20 ACollege and professional.</p> <p>21 QOkay. And they present games of teams</p> <p>22 that are regional teams, correct?</p>
<p style="text-align: right;">Page 6031</p> <p>1 AI was not aware of that.</p> <p>2 QYou were at Century at the beginning of</p> <p>3 1998, correct?</p> <p>4 AI left -- I mean, yes, for about a month.</p> <p>5 QWell, leading up to the beginning of 1998,</p> <p>6 the WTBS conversion from distant signal to cable</p> <p>7 network happened, correct?</p> <p>8 AYes, that's right.</p> <p>9 QWere you aware of that?</p> <p>10 AConversion?</p> <p>11 QYes.</p> <p>12 AVery much so.</p> <p>13 QAnd were you involved in negotiating the</p> <p>14 contract for the carriage of WTBS --</p> <p>15 AYes, I was.</p> <p>16 Q-- as a cable network?</p> <p>17 AYes, I was.</p> <p>18 QAre you aware that as a condition of</p> <p>19 permitting the conversion Major League Baseball</p> <p>20 required the reduction in the number of baseball games</p> <p>21 on WTBS after it converted?</p> <p>22 ANo, I was not aware.</p>	<p style="text-align: right;">Page 6033</p> <p>1 AThat's correct.</p> <p>2 QWas there any difference between 1992 and</p> <p>3 1998 with respect to the existence of these regional</p> <p>4 sports networks?</p> <p>5 AI think there were a lot more regional</p> <p>6 sports networks in '98 than in '92.</p> <p>7 QOkay. And, in fact, Fox began in roughly</p> <p>8 the mid '90s to acquire and promote and build these</p> <p>9 regional sports networks, correct?</p> <p>10 ACorrect.</p> <p>11 QAnd these regional sports networks took</p> <p>12 professional baseball games, correct? Or present</p> <p>13 professional baseball games, is that right?</p> <p>14 AAmong other sports, as I recall.</p> <p>15 QRight. And from the perspective of what's</p> <p>16 available to a particular cable operator, there's</p> <p>17 going to be maybe one regional sports network</p> <p>18 available, correct?</p> <p>19 AGenerally speaking, yes.</p> <p>20 QBut as between '92 and '98, it may well be</p> <p>21 that the particular cable operator didn't have such a</p> <p>22 regional sports network available to it in 1992, but</p>

<p style="text-align: right;">Page 6034</p> <p>1 may have it in '98, correct?</p> <p>2 AThat's -- yes, that's possible. That's</p> <p>3 likely I guess.</p> <p>4 QAnd these regional sports networks</p> <p>5 transmit a substantial number of games, correct?</p> <p>6 AYes.</p> <p>7 QNow, in terms of deciding -- just let's</p> <p>8 take a hypothetical. If a particular cable operator</p> <p>9 were deciding whether to carry WGN as a distant</p> <p>10 signal, and notwithstanding the sort of gripping saga</p> <p>11 of the Cubs, who never appear -- because we're all</p> <p>12 waiting for them to win again, and that, of course, is</p> <p>13 very interesting to people all around the country.</p> <p>14 But apart from that issue, isn't it --</p> <p>15 wouldn't it be the case that a cable operator is</p> <p>16 likely to find more valuable a substantial number of</p> <p>17 games from the local teams or the regional teams than</p> <p>18 necessarily the White Sox or the Cubs?</p> <p>19 AYes. But I don't understand that that's</p> <p>20 the nature of this proceeding at all. But, yes, I</p> <p>21 would think the local teams are more valuable.</p> <p>22 QOkay. In what way do you think that's not</p>	<p style="text-align: right;">Page 6036</p> <p>1 in effect created a situation in which distant signals</p> <p>2 were squeezed out by must-carry stations. Is that</p> <p>3 right?</p> <p>4 AIt certainly provided the potential for</p> <p>5 that to happen. I don't have the overall statistics</p> <p>6 of what happened, but it's a likely scenario.</p> <p>7 QOkay. But your first point has to do with</p> <p>8 the effect of the must-carry rules on the number of</p> <p>9 distant signals that are carried by cable operators?</p> <p>10 AYes.</p> <p>11 QOkay. And secondly, it appears that you</p> <p>12 -- your second point appears to me to be that with</p> <p>13 respect to retransmission consent negotiations, to the</p> <p>14 extent local stations, as part of the retransmission</p> <p>15 consent process, won an agreement from a cable</p> <p>16 operator to carry an additional non-broadcast channel,</p> <p>17 that also had an indirect effect on the number of</p> <p>18 distant signals that were carried by cable systems.</p> <p>19 Is that your second point?</p> <p>20 AI think, to be more specific, my second</p> <p>21 point was that had a direct impact on the overall</p> <p>22 channel capacity crunch or concerns that cable</p>
<p style="text-align: right;">Page 6035</p> <p>1 the nature of this proceeding?</p> <p>2 AWell, I understand that this proceeding is</p> <p>3 trying to divide amongst the categories available on</p> <p>4 distant signals what the relative value is of that</p> <p>5 programming. And so how any of those channels compare</p> <p>6 to other channels and the programming on them I didn't</p> <p>7 think was to the point.</p> <p>8 QOkay. Well, the rise of regional sports</p> <p>9 networks is a market change between '92 and '98, is it</p> <p>10 not?</p> <p>11 AIt is.</p> <p>12 QAnd from the perspective of -- looking at</p> <p>13 all of the -- the array of choices available, the</p> <p>14 existence of regional cable networks is a new factor</p> <p>15 that would have to be taken into account in making</p> <p>16 programming decisions in 1998, correct?</p> <p>17 AThat's correct.</p> <p>18 QOkay. And would you turn to page 6 of</p> <p>19 your testimony, please. Now, as I read this, you have</p> <p>20 two central points, and I'd ask you to correct me if</p> <p>21 I'm wrong. But the first one is that the adoption of</p> <p>22 must-carry rules under the -- after the 1992 Cable Act</p>	<p style="text-align: right;">Page 6037</p> <p>1 operators were feeling at that time.</p> <p>2 QSo with respect to the first point, you're</p> <p>3 looking at the impact on the lowest tier of service.</p> <p>4 And with respect to the second point, you're looking</p> <p>5 at --</p> <p>6 AThe overall.</p> <p>7 Q-- the overall, which it -- well, let's</p> <p>8 talk about that in detail as we go along. Now, are</p> <p>9 there other points that you make in this last few</p> <p>10 pages of your testimony, pages 6 through 8?</p> <p>11 AI think you got the major points.</p> <p>12 QOkay.</p> <p>13 AI take that back. On page 7, I think</p> <p>14 there's one other point in the middle, my middle</p> <p>15 paragraph on page 7, that I think is significant. And</p> <p>16 that is that sometimes distant signals could get</p> <p>17 dropped from a system because they could. It was</p> <p>18 legally possible to drop them. That one of the places</p> <p>19 cable operators have to look when in a channel crunch</p> <p>20 and forced to remove a channel, which we don't like to</p> <p>21 do, is to look where legally you can. And many, if</p> <p>22 not most -- I'd say most of our affiliation contracts</p>

<p style="text-align: right;">Page 6038</p> <p>1 with national cable channels do not allow us to delete 2 them.</p> <p>3 QAnd the cable channels are carried -- the 4 cable networks are carried on expanded basic or on a 5 higher tier than the limited basic that you were 6 talking about before?</p> <p>7 AMost of the time, yes.</p> <p>8 QSo that that effect would mean that you 9 don't have room in the upper tier to expand your 10 limited basic into? Exactly how would that work?</p> <p>11 AI think the point I was trying to make was 12 just generally that this was a period of time we were 13 looking at impacts on cable operator programming 14 decisions. This was a period of time where we felt 15 very channel constrained, and there were several 16 different forces adding new channels, whether they 17 were must-carry broadcasters, or they were new cable 18 channels associated with retransmission consent, or, 19 to your point, new regional sports channels that all 20 were vying for space that felt limited.</p> <p>21 JUDGE GULIN: Do I understand you to say 22 that in your organization some systems did, in fact,</p>	<p style="text-align: right;">Page 6040</p> <p>1 A Because we think it's a mutually 2 beneficial arrangement for broadcasters as well as for 3 the cable system. We improved the delivery of the 4 broadcasters and increased their reach, and also made 5 a one-stop shopping, if you will, video array for our 6 subscribers, where they could get local channels as 7 well as national channels.</p> <p>8 Q So you're saying that the cable industry 9 carried local stations in order to benefit the local 10 stations. Was that sort of an altruistic motivation?</p> <p>11 A It's my position, since I participated in 12 retransmission consent negotiations, and I was aware 13 of all of the changes around must-carry and 14 retransmission, it's my position that carrying local 15 stations on cable systems is mutually beneficial. 16 It's worth it to the cable operator, but it is also 17 very beneficial to the broadcaster.</p> <p>18 Q Okay. That's fair. And I'd like to focus 19 on the benefit to the cable operator first. It is the 20 case, is it not, that cable operators, by providing 21 the entire package of local stations, or providing 22 local stations to their subscribers, are advantaged</p>
<p style="text-align: right;">Page 6039</p> <p>1 have to drop distant signals as a result of must- 2 carry? Or are you just saying that that was an effect 3 in the industry?</p> <p>4 THE WITNESS: I said that was an effect in 5 the industry.</p> <p>6 JUDGE GULIN: Okay. So you're not aware 7 of it actually happening in your organization.</p> <p>8 THE WITNESS: I have no recollection of it 9 happening directly.</p> <p>10 JUDGE GULIN: Okay. And the same applies 11 to retransmission consent negotiations?</p> <p>12 THE WITNESS: That's correct.</p> <p>13 JUDGE GULIN: Okay.</p> <p>14 BY MR. STEWART:</p> <p>15 QNow, before 1993, for a period of maybe 16 six or eight years, there were no must-carry rules in 17 effect, correct?</p> <p>18 ACorrect.</p> <p>19 QBut cable systems, including Century 20 systems, carried local stations, did they not?</p> <p>21 AThat's right.</p> <p>22 QWhy did they do that?</p>	<p style="text-align: right;">Page 6041</p> <p>1 competitively. That is, you get more subscribers if 2 you can offer that package, right?</p> <p>3 AWell, certainly subscribers who have 4 trouble getting -- that are in some sort of an 5 apartment building or in some sort of a physical 6 location where they can't get over-the-air 7 transmission, it's a big benefit. It's frequently a 8 reason people subscribe who are in that situation.</p> <p>9 QAnd from the mid to late '90s onward, as 10 cable was competing with direct broadcast satellite 11 services who weren't permitted at that point to 12 provide local stations, it was a significant 13 competitive advantage, wasn't it?</p> <p>14 AIt was, and we used it as a marketing 15 message. We liked the fact that we were local, and 16 local broadcasters were available on our system, yes.</p> <p>17 QOkay. And --</p> <p>18 JUDGE GULIN: What about low power 19 stations, local stations? Were you required to carry 20 them under must-carry?</p> <p>21 THE WITNESS: I don't recall the specific 22 rules. It depended on at a certain level of power.</p>

<p style="text-align: right;">Page 6042</p> <p>1 If they were valid -- and probably somebody here can 2 correct me -- then you did. There were tests that 3 they had to pass, as I recall, to indicate whether 4 they were strong enough. If they were a strong enough 5 signal, yes. If they were a weak enough -- too weak, 6 then no, is my recollection. 7 JUDGE GULIN: So I take it there were some 8 local stations that you really didn't want to carry. 9 THE WITNESS: Well -- 10 JUDGE GULIN: You perceived no mutual 11 benefit at all. It was all in one direction. 12 THE WITNESS: I very much recall from our 13 perspective, when I was at Century and must-carry and 14 retransmission consent was enacted, what we perceived 15 was the weaker stations that we would not have gone 16 out to choose or seen a lot of value in putting it on 17 our product line, elected must-carry, and we were 18 forced to put them on. And the, if you will, stronger 19 stations, you know, wanted to negotiate for 20 compensation. 21 BY MR. STEWART: 22 QAnd I want to come back to that specific</p>	<p style="text-align: right;">Page 6044</p> <p>1 today. 2 JUDGE VON KANN: Here. I only need one, 3 since it has come in previously. That's okay. 4 MR. STEWART: Thank you, Your Honor. 5 BY MR. STEWART: 6 QHave you ever seen this type of data 7 before? 8 AYes, but not frequently, and I'm not very 9 familiar with it. 10 QAre you familiar, by the way, with the 11 statements of account that are filed with the 12 Copyright Office by cable systems every six months? 13 AI am familiar that those statements are 14 filed. I never filled them out and filed them. 15 QThese data are taken from those statements 16 of account by Cable Data Corporation. And I'm going 17 to look at the top system, these two systems on this 18 page. Just reading from -- this is an East Lansing, 19 Michigan, cable system. Do you see that up at the 20 top? 21 AYes. 22 QAnd this is for the period the second half</p>
<p style="text-align: right;">Page 6043</p> <p>1 point. During the period when there were no must- 2 carry rules in effect, did the Century systems or did 3 cable systems in general ever change the local 4 stations that they carried? 5 AI think it would be pretty unusual. 6 There's probably, since you have two boxes there, some 7 example where we did. But it's not a common thing. 8 I think changing lineups -- you know, changing 9 lineups, specifically the local broadcasters that are 10 carried, is pretty unusual. 11 QWell, are there cases where new stations 12 begin to broadcast in a market, and they would be 13 picked up at that point? 14 AYes. 15 QAre there ever changes in the affiliation 16 of local stations that might cause you to pick a new 17 one up? 18 AAbsolutely. 19 QI want to show you what has previously 20 been marked as -- this turns out to be one of my 21 favorite exhibits -- Joint Sports Exhibit Number 39-X. 22 And I passed out copies yesterday, and here's more</p>	<p style="text-align: right;">Page 6045</p> <p>1 of 1999, which is indicated by the 1999-2 in the very 2 top line there. 3 AOkay. 4 QOkay. Do you know where East Lansing, 5 Michigan, is roughly? 6 AI have a guess -- I mean, yes, 7 approximately. 8 QOkay. Actually, we can be more specific 9 than that. 10 AI was going to say it's probably east of 11 Lansing, but I didn't know if I'd get in trouble for 12 that. 13 QI'm not even sure about that. But 14 everybody who talks about Michigan says this is 15 Michigan. I can never remember if it's that way or 16 that way, but -- and then they point to where they 17 live and then the upper peninsula. 18 But if you just look at the station 19 listing there, the first column is the call sign, the 20 second is the channel, and the third is the type of 21 station, I for independent, N for network, E for 22 educational. And then, the second letter there is --</p>

<p style="text-align: right;">Page 6046</p> <p>1 for example, WILX is NN. That means it's an NBC 2 affiliate. 3 AOkay. 4 QThe next column that says "Since," 5 indicates the period in which the station was first 6 reported as being carried. 7 AI see. 8 QThen, the city of license of the station 9 and the county, and so on, and the state of the -- 10 from which the station comes. 11 AYes. 12 QAnd then, several columns over there is a 13 column just after those pair of question marks that 14 says "BC," do you see that? 15 AYes. 16 QAnd below that is listed either a D for a 17 distant station or an L for a local station. Okay? 18 AOkay. 19 QNow, what I wanted to look at with you 20 here was station WLAJ about halfway down the list. 21 AOkay. 22 QDo you see that? And that's an ABC</p>	<p style="text-align: right;">Page 6048</p> <p>1 the very first period in which statements of account 2 were filed. So this appears to be a situation in 3 which a Detroit ABC affiliate was carried by the 4 system for a long time, and then just beginning in 5 1990 there was a Lansing, Michigan, ABC affiliate. 6 That's channel 53 there. 7 Now, is that consistent with your 8 understanding of what generally is happening in the 9 television industry -- that is, the fact that new 10 stations are going on the air, have been going on the 11 air in smaller markets, and typically on UHF channels? 12 AThat sounds right. I don't have any deep 13 knowledge of the trends in broadcasting over this 14 period. 15 QAre you familiar with the 3.75 royalty 16 rate and the difference between permitted and non- 17 permitted signals? 18 AGenerally. 19 QIf you see this -- WXYZ is carried as a 20 3.75 signal, which you can tell because it's got a 21 dollar entry of \$18,000 and some. 22 AUnder the 3.75 column, yes.</p>
<p style="text-align: right;">Page 6047</p> <p>1 affiliate. It says NA there. 2 AYes. 3 QAnd it was carried since 1990-2, do you 4 see that? 5 ASo the second half of 1990? 6 QRight. And it's a station from Lansing 7 itself, which turns out to be -- there's a mileage 8 column, and it's only three miles from East Lansing, 9 so that gives us some closer fix on it. We don't know 10 which direction. 11 AOkay. 12 QAnd if you look further down the column 13 there, you see WXYZ. 14 AYes. 15 QAre you familiar with that station? 16 ANo, but it looks like it's an ABC 17 affiliate from Detroit. 18 QOkay. And it's carried as a distant 19 signal, do you see that? 20 AYes. 21 QSo that this appears to suggest that -- 22 and it has been carried since 1978, which is actually</p>	<p style="text-align: right;">Page 6049</p> <p>1 QRight. And the 3.75 rule in part was a 2 market quota rule, right? It said you could have a 3 certain number of a certain type of stations, and that 4 those were permitted stations? 5 AThat sounds right. I don't know anything 6 about the genesis of the law. 7 QWell, assume with me that the market 8 quotas allowed one affiliate of each network, that was 9 what a permitted station was, and then, this cable 10 system for many years it carried WXYZ as its permitted 11 station for which it wouldn't pay any 3.75 royalties, 12 okay? 13 ARight. 14 QWhen WLAJ came on line locally in Lansing, 15 the system then had two ABC affiliates. 16 AI see that. 17 QAnd, thus, it had to increase the amount 18 of royalties it paid for the distant ABC affiliate 19 from Detroit. 20 AI see that. 21 QNow, do you know whether WXYZ or any of 22 the other stations from Detroit, any other distant</p>

<p style="text-align: right;">Page 6050</p> <p>1 signals from Detroit, have sports programs on them?</p> <p>2 AI don't know. I would guess that they</p> <p>3 might.</p> <p>4 QDo you know whether WXYZ does, the ABC</p> <p>5 affiliate?</p> <p>6 AI don't know.</p> <p>7 QOkay. If you assume with me that the ABC</p> <p>8 affiliate did not have sports programs, live sports</p> <p>9 games on it, that there was also a local source for</p> <p>10 the ABC network programs, that would leave essentially</p> <p>11 the station-produced news programs and some syndicated</p> <p>12 programs as the new programs that are provided by that</p> <p>13 distant signal, correct?</p> <p>14 ARight.</p> <p>15 QOkay. And does it surprise you that the</p> <p>16 system would have paid more for that station than it</p> <p>17 did for any of the other distant signals that it</p> <p>18 carried?</p> <p>19 ANo, because there's a history. Cable</p> <p>20 systems don't like to take off programming. We do it,</p> <p>21 in general, under duress, unless -- or if there is a</p> <p>22 strong business reason. My guess is since the</p>	<p style="text-align: right;">Page 6052</p> <p>1 voluntarily -- could either carry that station or not</p> <p>2 carry that station in 1990, correct?</p> <p>3 AThat's correct. The cable systems are</p> <p>4 driven to make decisions that make their local</p> <p>5 franchise officials happy as well as their</p> <p>6 subscribers.</p> <p>7 QOkay.</p> <p>8 ASo my guess is there would be political</p> <p>9 pressure to put that channel on, as well as subscriber</p> <p>10 desire.</p> <p>11 QRight, okay. Now, at the top -- at the</p> <p>12 bottom of page 6 and carrying over to the top, you</p> <p>13 specifically focus on must-carry rules that force</p> <p>14 systems to carry duplicate educational stations,</p> <p>15 religious stations, and home shopping stations. Do</p> <p>16 you see that?</p> <p>17 AYes, I do.</p> <p>18 QAre those the kinds of stations you were</p> <p>19 discussing with Judge Gulin as being viewed as not</p> <p>20 worth the channel space by the cable operator?</p> <p>21 AWell, I think Judge Gulin asked me</p> <p>22 specifically about low power stations, but those are</p>
<p style="text-align: right;">Page 6051</p> <p>1 institution of this system they've been carrying a</p> <p>2 Detroit ABC. All of a sudden, in 1990, a new ABC</p> <p>3 shows up more locally.</p> <p>4 There is a pattern and a familiarity with</p> <p>5 the Detroit news and other programming from that</p> <p>6 channel, and I'm sure they felt there would be</p> <p>7 considerable disruption to their consumers to take it</p> <p>8 off -- to their subscribers.</p> <p>9 QAnd the same might go for WKBD -- do you</p> <p>10 see it there -- which was carried also since 1978, the</p> <p>11 first half of 1978?</p> <p>12 AOkay.</p> <p>13 QThat's another distant signal from</p> <p>14 Detroit?</p> <p>15 AYes, okay.</p> <p>16 QAnd does the --</p> <p>17 ASame theory.</p> <p>18 QOkay. Now, WLAJ began to be carried in</p> <p>19 the second half of 1990, but there were no must-carry</p> <p>20 rules in the second half of 1990, correct?</p> <p>21 AThat's correct.</p> <p>22 QSo the cable system decided it could</p>	<p style="text-align: right;">Page 6053</p> <p>1 examples of stations, especially if they're</p> <p>2 duplicative, that a cable operator would not feel</p> <p>3 enthusiastic about giving up a channel for.</p> <p>4 QNow, is that the case even if there was</p> <p>5 some constituency within the franchise area that would</p> <p>6 have valued, say, a religious station relatively high?</p> <p>7 AMy experience is that there is almost</p> <p>8 always a constituency for everything you either have</p> <p>9 on or could put on. So the process of programming a</p> <p>10 cable lineup, especially when there's not as much</p> <p>11 capacity as you'd like, is a very difficult process.</p> <p>12 It is a matter of trading off relative weights of</p> <p>13 advocacy and relative groups of advocacy, because</p> <p>14 everything has some following.</p> <p>15 QWhere do distant signals stand during this</p> <p>16 period in 1992 to 1998? Were distant signals an</p> <p>17 important part of what a cable operator used to sell</p> <p>18 subscribers?</p> <p>19 AI think that's a hard question to</p> <p>20 generalize about. But I would say no, they were not</p> <p>21 an important part of how we marketed our systems.</p> <p>22 QYou mentioned home shopping stations there</p>

<p style="text-align: right;">Page 6054</p> <p>1 at the top of page 7.</p> <p>2 AYes.</p> <p>3 QWhy would a cable operator not want to</p> <p>4 carry a home shopping station in this period, roughly</p> <p>5 '93?</p> <p>6 AWell, home shopping stations pay us money,</p> <p>7 so there is a financial benefit to carrying them. But</p> <p>8 too many on a limited capacity system starts to have</p> <p>9 subscriber backlash, because home shopping, like some</p> <p>10 other home shopping fans, are very loyal, but they're</p> <p>11 a small percentage of the overall subscriber base.</p> <p>12 And if you're trying to appeal to the</p> <p>13 widest number of people, too many home shopping</p> <p>14 stations can turn off the non-home shopping fans.</p> <p>15 QIn this period of the mid '90s, were there</p> <p>16 home shopping cable networks?</p> <p>17 AYes.</p> <p>18 QAnd how many of them were there?</p> <p>19 AWell, I don't have that specifically, but</p> <p>20 I think there were three major ones.</p> <p>21 QAnd were all three generally carried by</p> <p>22 cable operators?</p>	<p style="text-align: right;">Page 6056</p> <p>1 QNow, Century Communications was a long-</p> <p>2 time opponent of the must-carry rules, correct?</p> <p>3 AYes.</p> <p>4 QAre you familiar with the history of</p> <p>5 Century Communications before you joined in 1992?</p> <p>6 ASomewhat.</p> <p>7 QThere were must-carry rules in effect from</p> <p>8 the mid '60s until 1985 when they were struck down by</p> <p>9 the -- by a court of appeals. Are you aware of that?</p> <p>10 AVaguely, yes.</p> <p>11 QOkay. And then, the FCC adopted a new set</p> <p>12 of must-carry rules in 1986 that were much more</p> <p>13 limited. Are you aware of that?</p> <p>14 AI don't recall that.</p> <p>15 QDo you know that Century Communications</p> <p>16 was the lead plaintiff in the case to have those</p> <p>17 declared unconstitutional?</p> <p>18 AI did not know that specifically, but I</p> <p>19 did know that the chairman of Century was opposed to</p> <p>20 regulation in general, and must-carry probably in</p> <p>21 specific.</p> <p>22 QOkay. And the basis for the challenge of</p>
<p style="text-align: right;">Page 6055</p> <p>1 ASome more than others. I think QVC was</p> <p>2 probably the most widely carried. HSN would be</p> <p>3 second, and Value Vision would be third, would be my</p> <p>4 guess.</p> <p>5 QBut cable operators, would they typically</p> <p>6 have more than one of those three?</p> <p>7 AI don't have those statistics, but it</p> <p>8 wouldn't surprise me.</p> <p>9 QAnd when you referred to the fact that the</p> <p>10 home shopping stations paid for carriage in this</p> <p>11 period in the mid '90s, were you referring to those</p> <p>12 home shopping cable networks?</p> <p>13 AYes.</p> <p>14 QSo that if there were a local broadcast</p> <p>15 station that also broadcast home shopping</p> <p>16 programming --</p> <p>17 ARight.</p> <p>18 Q-- and came to be carried by the cable</p> <p>19 operator, the cable operator would have an incentive</p> <p>20 not to allow, in effect, competition with a paying</p> <p>21 cable network, right?</p> <p>22 AThat's right.</p>	<p style="text-align: right;">Page 6057</p> <p>1 the rules in the court was that they infringed on the</p> <p>2 First Amendment rights of the cable operator?</p> <p>3 MR. COOPER: I object. It lacks</p> <p>4 foundation.</p> <p>5 JUDGE VON KANN: Well, she has indicated</p> <p>6 some knowledge of this area. I think she can answer</p> <p>7 if she knows that. Overruled.</p> <p>8 THE WITNESS: I vaguely know that. I</p> <p>9 mean, I had no input into the belief structure or</p> <p>10 activities of the chairman of Century.</p> <p>11 BY MR. STEWART:</p> <p>12 QWell, do you know whether the must-carry</p> <p>13 rules that were adopted in 1986 and challenged by</p> <p>14 Century actually would have -- actually limited the</p> <p>15 must-carry obligations of the cable operator, so that</p> <p>16 they wouldn't have to carry duplicate network</p> <p>17 stations, or more than one educational station, or</p> <p>18 stations that weren't viewed by more than -- by five</p> <p>19 percent of the people in the market?</p> <p>20 AAre you asking me if I was aware of that?</p> <p>21 QYes.</p> <p>22 AI wasn't aware of any of the specifics of</p>

<p style="text-align: right;">Page 6058</p> <p>1 what Century was arguing six years before I joined the 2 company. 3 QOkay. But if those rules had not been 4 declared unconstitutional, they would have solved some 5 of the problems that you complain about -- that you've 6 focused on in your testimony -- that is, with respect 7 to duplicate educational stations and religious 8 stations and home shopping stations. 9 MR. COOPER: I object. It lacks 10 foundation. He's asking her to assume a set of facts, 11 and then wants to test that, but she doesn't know -- 12 I think she has testified she doesn't know this 13 subject. 14 JUDGE VON KANN: If that's her answer, she 15 can certainly give it. 16 MR. COOPER: Okay. 17 THE WITNESS: I think what you're asking 18 me is if the '86 must-carry rules were more forgiving, 19 if you will, if they were easier on a cable operator, 20 would I have preferred those if I made the rules? 21 Then, the answer is: sure. 22 BY MR. STEWART:</p>	<p style="text-align: right;">Page 6060</p> <p>1 retransmission consent negotiations with individual 2 stations? 3 AAs a supervisor. An individual 4 one-on-one, a negotiation would happen at our local 5 level. And if they weren't able to agree -- I set 6 rules for the company, if you will, or guidelines for 7 those negotiations and would coach individuals who 8 negotiated those. 9 QAnd you describe this at the top in the 10 carryover sentences, "sometimes onerous negotiations." 11 What do you mean by that? 12 AWell, I think that sometime the 13 negotiations went on a lot longer than either side 14 would enjoy. 15 MR. STEWART: I'm tempted to make a 16 comment about this proceeding, but I won't. 17 JUDGE von KANN: But you won't. 18 MR. STEWART: Right. 19 BY MR. STEWART: 20 QJust focusing on retransmission consent 21 negotiations with respect to carriage of local 22 stations within their local market, --</p>
<p style="text-align: right;">Page 6059</p> <p>1 QOkay. And Century was involved in the 2 process of having those rules stricken down, and those 3 rules that were ultimately replaced by the rules 4 coming out of the 1992 Cable Act, right? 5 ASo you say. 6 QOkay. 7 AAnd I had nothing to do with that. 8 MR. STEWART: Okay. Mr. Chairman, would 9 this be an appropriate place for a break? I'm about 10 to move into a new area. 11 JUDGE VON KANN: Might be. Let's take one 12 and come back in 15 minutes. 13 (Whereupon, the proceedings in the 14 foregoing matter went off the record at 15 3:05 p.m. and went back on the record at 16 3:21 p.m.) 17 BY MR. STEWART: 18 QMs. Allen, just a moment on retransmission 19 consent, which you discuss at pages 7 and 8 of your 20 testimony. Do you see that? 21 AUh-huh. 22 QWere you directly involved in</p>	<p style="text-align: right;">Page 6061</p> <p>1 ARight. 2 Q-- was that the principal focus of your 3 retransmission consent guidelines and supervision? 4 AYes. 5 QAnd in that sphere, the local market, 6 cable operators found value in carrying, for example, 7 the network affiliates in the local market, correct? 8 AAs I stated before, I think it is mutually 9 benefit. 10 QSure, sure. But it would have been 11 detrimental to the cable system for the system not to 12 be permitted to carry the ABC, CBS, NBC, Fox 13 affiliates in the local market? 14 AThat's correct. 15 QOkay. In that sphere again, the local 16 market retransmission consent, did the negotiations 17 typically involve the MSO, on the one hand, and the 18 parent corporation or a network representing a number 19 of television stations on -- 20 AIt depended. The major networks 21 negotiated on behalf of their O&O's and in some cases 22 incorporated other affiliates. And some of the</p>

<p style="text-align: right;">Page 6062</p> <p>1 station groups attempted -- negotiated on behalf of 2 all of their own stations. And in some cases, 3 individual stations negotiated individually. So there 4 were various different patterns. 5 QAnd in some of those, the result of some 6 of those negotiations was that Century agreed to carry 7 additional channels as quid pro quo for being 8 permitted to carry the stations in the local markets? 9 AThat's correct. 10 QWere there other kinds of compensation or 11 considerations provided? 12 ANone that I recall directly, but I'm sure 13 it seems to me that there were some isolated 14 situations where we gave some promotional 15 consideration jointly sponsoring some local race or 16 perhaps running some spots that would promote the 17 station on our local channel avails. 18 QWere there situations in which Century 19 refused to agree to any retransmission consent 20 consideration and terminated the carriage of a station 21 on a local basis? 22 AI don't recall a specific situation, but</p>	<p style="text-align: right;">Page 6064</p> <p>1 QNow, turning to the distant signal 2 retransmission context, were you involved in 3 negotiations with individual stations for 4 retransmission consent on a distant signal carriage? 5 ANot directly, no. 6 QWho handled those negotiations? 7 AWell, the way we handled the volume of 8 retransmission consent negotiations is we had our 9 regional executives, who were in operating management, 10 and empowered to handle the bulk of the negotiations 11 on a local basis based on our guidelines. And they 12 were to -- the policy or the procedures were to -- 13 they were to escalate if they couldn't get agreements 14 according to our guidelines. 15 And I guess that would have covered local 16 and distant. At the time, I don't recall thinking 17 about the distant piece significantly. 18 QYou talk about regional executives. Does 19 Century have some clusters of systems in particular 20 markets? 21 AYes. We also have a lot of little systems 22 that were all over the place. So a major cluster for</p>
<p style="text-align: right;">Page 6063</p> <p>1 it wouldn't surprise me. 2 QBut you don't know if there was such a 3 situation? 4 AI do recall that there were threats in Los 5 Angeles around WNBC or KNBC, but that was going up to 6 the deadline of the negotiations. And my recollection 7 is that we completed negotiations in the middle of the 8 night and the channel never went dark. 9 JUDGE GULIN: Excuse me. Were you 10 referring to just network affiliates or any local 11 stations? 12 MR. STEWART: I was referring in that 13 context to any local stations, but -- 14 THE WITNESS: So your question to me is do 15 I recall any time that Century refused to grant 16 retransmission consent and allowed a station to go 17 away? 18 MR. STEWART: On a local basis. 19 THE WITNESS: On a local basis. I just 20 don't recall it specifically. 21 MR. STEWART: Okay. 22 BY MR. STEWART:</p>	<p style="text-align: right;">Page 6065</p> <p>1 Century was Los Angeles. 2 QAre you aware of whether any distant 3 signal retransmission consent negotiation resulted in 4 the dropping of a station on a distant signal basis? 5 AI'm not aware of it specifically. It 6 wouldn't surprise me if it happened, but I'm not aware 7 of it. I don't recall any specific situations. 8 QAnd, on the other hand, are you aware of 9 any compensation or consideration that might have been 10 provided by Century in exchange for retransmission 11 consent for carriage of a station on a distant signal 12 basis? 13 AI'm aware that it was our policy not to 14 but that negotiations were happening locally. And it 15 wouldn't surprise me if a local manager agreed to 16 something that we would have preferred he did not do. 17 QBut you're not aware of details of those, 18 the results of those negotiations? 19 AOf a distant as opposing to a local? No, 20 I don't recall that. No. 21 QOkay. Now let's focus, finally, on the 22 specific issue of a must-carry station being added by</p>

<p style="text-align: right;">Page 6066</p> <p>1 a Century system and requiring the dropping of a</p> <p>2 distant signal. Okay?</p> <p>3 AUh-huh.</p> <p>4 QNow, are you aware of specific examples in</p> <p>5 which that happened?</p> <p>6 ANo. I think I was asked that before, and</p> <p>7 I don't recall any. I have general recollections of</p> <p>8 markets in which we might have had problems relative</p> <p>9 to must-carry, where we felt more of a crunch, if you</p> <p>10 will, in channel capacity.</p> <p>11 Los Angeles was one of them. I think Old</p> <p>12 Lyme, Connecticut was one. But I don't remember the</p> <p>13 specifics of how any of the -- how it was resolved.</p> <p>14 QI would like to hand you a document that</p> <p>15 has previously been marked in this proceeding as NAB</p> <p>16 exhibit 15-X.</p> <p>17 JUDGE von KANN: What is that? This came</p> <p>18 in before, didn't it?</p> <p>19 MR. STEWART: It did. Yes, sir.</p> <p>20 JUDGE von KANN: That's what I thought.</p> <p>21 BY MR. STEWART:</p> <p>22 QThis is a document prepared on the basis</p>	<p style="text-align: right;">Page 6068</p> <p>1 QNow, is that consistent with your</p> <p>2 understanding of what was happening in the industry</p> <p>3 over this period, '92 to '98, '99?</p> <p>4 AYes because there was quite a massive</p> <p>5 effort around rebuilding and increasing capacity in</p> <p>6 systems, cable systems.</p> <p>7 QThe number of channels, of activated</p> <p>8 channels, added on average over this period far</p> <p>9 exceeded the number of must-carry signals that were</p> <p>10 being added across this same period. Isn't that</p> <p>11 right?</p> <p>12 AThat's correct, but there's a couple of</p> <p>13 things. I would bet if you had this chart for how</p> <p>14 many channels were in limited basic, which I already</p> <p>15 described was a trapped out, technically challenging</p> <p>16 to move level, that that probably would not have</p> <p>17 changed or would have changed very slightly over this</p> <p>18 period of time.</p> <p>19 And most of these incremental channels</p> <p>20 being added were multiplex channels for the premium</p> <p>21 subscribers. One of the trends that was going on in</p> <p>22 the mid '90s was a concern that the number of</p>
<p style="text-align: right;">Page 6067</p> <p>1 of the data that the Sports Claimants used to present</p> <p>2 Dr. Hazlett's testimony in this proceeding.</p> <p>3 Essentially it reports the average number of activated</p> <p>4 channels reported by Form 3 cable systems in each of</p> <p>5 these periods for which the Sports Claimants had data,</p> <p>6 the '92, '97, '98, and '99. Okay?</p> <p>7 AUh-huh.</p> <p>8 QNow, are you familiar with the concept of</p> <p>9 the number of activated channels?</p> <p>10 AI don't know that I know that exact</p> <p>11 phrase, but I would assume it's the average number of</p> <p>12 channels that are lit up and video programming is</p> <p>13 being passed through them to consumers.</p> <p>14 QThat's essentially right. It's defined in</p> <p>15 the statement of account. It's something that the</p> <p>16 cable operators report, Form 3 cable operators report,</p> <p>17 every six months to the Copyright Office.</p> <p>18 AOkay.</p> <p>19 QThese data show that the average number on</p> <p>20 Form 3 systems of activated channels, '92 was 40</p> <p>21 channels and by the end of '99 was almost 67 channels.</p> <p>22 AUh-huh.</p>	<p style="text-align: right;">Page 6069</p> <p>1 subscribers to HBO and Showtime and the like were</p> <p>2 declining.</p> <p>3 And so we needed to increase the value</p> <p>4 proposition to a premium cable subscriber, which we</p> <p>5 did by offering them more channels. So, all of a</p> <p>6 sudden, it went from one channel of HBO to HBO</p> <p>7 Signature and HBO -- there were lots of additional</p> <p>8 channels offered to get you to subscribe.</p> <p>9 Also, this was a time of large growth in</p> <p>10 pay-per-view because cable operators were looking for</p> <p>11 incremental revenue streams in transactional</p> <p>12 televisions. So this increase is true, but it's not</p> <p>13 all channels that every consumer received. And it's</p> <p>14 certainly not channels that would have been impacted</p> <p>15 by must-carry.</p> <p>16 Q But it is channels that could have been</p> <p>17 available for adding must-carry signals if it within</p> <p>18 the strategic choices of the cable operator, correct?</p> <p>19 A Well, I'm not a legal expert. So I don't</p> <p>20 remember exactly how the rules read, but it was my</p> <p>21 understanding that must-carries by virtue of the law</p> <p>22 were mandatory on the lowest level of service, the</p>

<p style="text-align: right;">Page 6070</p> <p>1 most widely distributed. So must-carries had to go 2 into limited basic, I believe. 3 QBut the cable operator had the choice of 4 allocating its overall channel capacity as among the 5 different tiers of service that it offered, correct? 6 AOn a theoretical basis, yes. On a 7 practical basis, there was considerable cost to 8 changing the size of the limited basic. It would 9 involve ordering new traps and retrapping, sending 10 technicians out to reconfigure not just one thing at 11 the head end but traps in all the consumers who 12 already purchased just that limited basic. So it's a 13 considerable business expense. 14 QCan you give us an idea of what the 15 expense is on a per subscriber basis? 16 ANo, I really couldn't. 17 QBut different cable systems have different 18 numbers of channels. Of all the channel capacity that 19 they have, different cable operators allocate 20 different numbers to the limited basic, to the 21 expanded basic, to the other services? 22 AThat's correct. It's just not a number</p>	<p style="text-align: right;">Page 6072</p> <p>1 QAnd if you looked at, as Dr. Hazlett did, 2 '92 and '98, it looks like the number of channels of 3 television station programming being provided stayed 4 roughly the same but the must-carry or locals -- not 5 necessarily the must-carry but the local stations 6 increased in number and the distant stations decreased 7 in number, which you can see by comparing the left and 8 the right-hand columns. Okay? 9 AUh-huh. 10 QBut if you look at the middle here -- and 11 the must-carry rules went into effect in 1993, in the 12 second half of '93, correct? 13 AYes. I can't remember. There were 14 various dates by which we had to comply. 15 QJune '93 was the first date. Do you 16 recall that? 17 ASounds right. I'll bet you remember 18 better than I do. 19 QThe difference between '92 and '93 is that 20 the distant signals have stayed the same, but more 21 local stations have been added. And the total has 22 increased. Do you see that?</p>
<p style="text-align: right;">Page 6071</p> <p>1 that is easy to change once you have done it. There 2 is no guideline about what it has to be. It's just 3 once it's set, it's costly to change. 4 QDo you know if any of the Century systems 5 during this period, '92 to '98, changed, expanded the 6 limited basic -- 7 AYes, we did. 8 QI want to hand you next another document 9 that has been marked in this proceeding as NAB exhibit 10 16-X. What this does is to take based on similar 11 Cable Data Corporation data -- it should say "source: 12 Cable Data Corporation" -- I'm sorry -- is to take the 13 total number of channels devoted to television 14 stations, local and distant, for each of these years 15 and identify what average numbers were devoted to 16 local and what average numbers were devoted to 17 distant. 18 So that, for example, for 1990 2-2, on 19 average across the Form 3 systems, they were providing 20 7 and a half channels of local stations and 3.3 21 channels of distant stations. Okay? 22 AUh-huh.</p>	<p style="text-align: right;">Page 6073</p> <p>1 AYes, I do. 2 QYou can see the pattern year by year 3 between these two periods, but we're looking not at 4 the total number of technical channels, the total 5 channel capacity, but the actual number of channels 6 devoted to television stations' programming. Okay? 7 AUh-huh. 8 QNow, is this consistent with your 9 understanding of what was going on as the must-carry 10 rules increased the number of local stations that 11 systems carried? 12 AWell, I didn't do a statistical analysis. 13 And it appears that that is what this is. I gave in 14 my testimony some general patterns that were going on 15 in the industry and that were impacting people who 16 were making decisions around programming. So I gave 17 my impressions from my experience. 18 QDo you see between '97 and '98 that there 19 is a decline in distant signals as well as in total 20 number of stations carried? 21 AYes. 22 QDo you know what happened between '97 and</p>

<p style="text-align: right;">Page 6074</p> <p>1 '98?</p> <p>2 AYes. WTBS converted to a cable channel.</p> <p>3 MR. STEWART: Now I would like to turn to</p> <p>4 a few specific examples of Century systems during this</p> <p>5 period. The first one I would like to have marked as</p> <p>6 28-X.</p> <p>7 (Whereupon, the aforementioned</p> <p>8 document was marked for</p> <p>9 identification as NAB Exhibit</p> <p>10 Number 28-X.)</p> <p>11 BY MR. STEWART:</p> <p>12 QIf you could write that down on your copy,</p> <p>13 that would be helpful for later future reference.</p> <p>14 Now, did Century own a cable system in</p> <p>15 Enterprise, Alabama?</p> <p>16 AYes, we did.</p> <p>17 QWhat I have done here is simply to take</p> <p>18 the Cable Data Corporation information about the</p> <p>19 stations carried by that system and other information</p> <p>20 about the system for the second half of 1992 -- that's</p> <p>21 the first page -- and the second half of 1998 on the</p> <p>22 second page. Okay?</p>	<p style="text-align: right;">Page 6076</p> <p>1 The next, CHAN-ACTIVE, is the reported</p> <p>2 number, a number reported by the system to the</p> <p>3 Copyright Office of the number of activated channels</p> <p>4 that it had during that period.</p> <p>5 And the next is the number it reported as</p> <p>6 being occupied by television stations.</p> <p>7 AOkay.</p> <p>8 QThe next is the monthly subscriber rate</p> <p>9 that is reported by the cable system for the Copyright</p> <p>10 Office. Next is the number of subscribers. And,</p> <p>11 actually, I shortened that to SUBS, but that used to</p> <p>12 say "subscribers" there. That's 8,330.</p> <p>13 These next two columns are ones that I</p> <p>14 have added. D or X means it's either -- do you know</p> <p>15 what X refers to in this statement of account or --</p> <p>16 AI'm not that familiar with those forms.</p> <p>17 QDo you know what a partially distant</p> <p>18 television station is?</p> <p>19 AYes.</p> <p>20 QCould you describe that?</p> <p>21 AMy understanding is it's a television</p> <p>22 station that's distant in portions of the cable system</p>
<p style="text-align: right;">Page 6075</p> <p>1 ARight.</p> <p>2 QJust walking through the columns of</p> <p>3 information, the first is the owner name?</p> <p>4 MR. COOPER: Could I ask you a</p> <p>5 clarification? Do these column headings have the same</p> <p>6 meaning as they do in the CDC data?</p> <p>7 MR. STEWART: They do except I think I</p> <p>8 changed the spelling of one because it didn't make any</p> <p>9 sense. But I will tell you also I have added two</p> <p>10 headings now. I'll tell you which ones they are.</p> <p>11 MR. COOPER: Fine.</p> <p>12 BY MR. STEWART:</p> <p>13 QFirst is the owner name. That's from</p> <p>14 Cable Data Corporation. Second is the prime city of</p> <p>15 the system. And the third column is the state in</p> <p>16 which that community is located, so Enterprise,</p> <p>17 Alabama.</p> <p>18 The next is the system identification</p> <p>19 number. And I think that is assigned by Cable Data</p> <p>20 Corporation. Anyway, that's identified for that</p> <p>21 particular system. The third is the accounting</p> <p>22 period. That's the second half of 1992.</p>	<p style="text-align: right;">Page 6077</p> <p>1 and local and others.</p> <p>2 QAnd that is reported in these data as an</p> <p>3 X.</p> <p>4 AOkay.</p> <p>5 QSo that D or X column is just the total</p> <p>6 number of stations that are carried on either a</p> <p>7 distant or partially --</p> <p>8 APartially distant basis. Okay.</p> <p>9 QThe next L is the number that are local.</p> <p>10 AUh-huh.</p> <p>11 QThen the call sign and the city and state</p> <p>12 from which the station is, the channel number of the</p> <p>13 station, the type of the station, I for independent</p> <p>14 and so on. The VIST is something reported by Cable</p> <p>15 Data Corporation, which is just the number of miles</p> <p>16 away that the station is from the system.</p> <p>17 And then, finally, B-OFF-C means basis of</p> <p>18 carriage. And that's where you see if it's distant or</p> <p>19 local or partially distant. Okay?</p> <p>20 AOkay.</p> <p>21 QAll I did for those two columns that I</p> <p>22 added before the call signs was just count up the</p>

<p style="text-align: right;">Page 6078</p> <p>1 numbers of D's and L's and X's in that right-hand 2 column. 3 Okay. Have we got that so far? 4 AI'm with you so far. 5 QSo this is the Century system in 6 Enterprise, Alabama and in 1990 one distant signal. 7 Do you see that? 8 AUh-huh. 9 QNow, are you familiar with the 10 circumstances of this particular system? 11 AI don't know how to answer. I don't know 12 how to define circumstances. 13 QAre you familiar with what stations it 14 carried at various times across this period? 15 ANot intimately. 16 QDo you know, was it common for Century 17 systems to carry WTBS as a distant signal in 1992? 18 AYes, it was. 19 QIf you turn the page to the 1998 page, you 20 see that WTBS has gone as a distant signal. 21 AThat's because it changed at the end of 22 '97.</p>	<p style="text-align: right;">Page 6080</p> <p>1 QNow, this would not be an example of a 2 system that had to drop a distant signal in order to 3 accommodate new must-carry signals, right? 4 AI't doesn't appear to be. Right. 5 QBecause the system carried all of those 6 local stations before the must-carry rules and does 7 continue to carry the same lines after? 8 AMy understanding was that in general, the 9 systems that were more impacted by that would be 10 systems that were in larger markets, where there were 11 more television stations. 12 Enterprise, Alabama is a pretty small 13 place. I don't think that there was the business 14 proposition for a lot of new low-power or other 15 independent television stations to go into business 16 and get carriage. 17 QOkay. I want to look at some big markets 18 next. But with respect to this one, this appears to 19 be a case in which the system was not forced to drop 20 a distant signal in order to accommodate new 21 must-carry signals, right? 22 AThat's what it appears.</p>
<p style="text-align: right;">Page 6079</p> <p>1 QSo we shouldn't see any distant signal 2 carriage of WTBS in 1998, right? 3 AUh-huh. 4 QIf you just compare the list of stations, 5 it looks like it carries all the same stations as 6 local signals as it carried before and now it doesn't 7 carry any distant signals at all in 1998. Okay? 8 AThat's what it looks like. 9 MR. COOPER: Maybe it is a typo, but there 10 is a difference in the call signs. 11 THE WITNESS: It's GIQ out of Louisville 12 or DIQ out of Dozier. I don't know if that -- 13 MR. STEWART: Well, if you look at the 14 channel number and the city it's from, I think they 15 are actually different stations. So yes. I'm sorry. 16 I misspoke. It looks like one of the stations may 17 have been substituted. 18 THE WITNESS: Substituted. Okay. 19 MR. STEWART: But they're both carried on 20 a local basis. 21 THE WITNESS: Okay. 22 BY MR. STEWART:</p>	<p style="text-align: right;">Page 6081</p> <p>1 QAnd that would have been the case for 2 other Century systems as well across this '92 to '98 3 period? 4 AThat's right. 5 QIf you look at the activated channel 6 number, for '92, it was 37. For '98, it was 57. 7 ARight. 8 QThere is a substantial increase in the 9 number of channels on this particular system? 10 AA't Century, as at many, if not most, MSOs, 11 we were actively rebuilding our systems during the 12 '90s. 13 QSo we are going to see that -- 14 AWe should see that across the board. 15 QOkay. If you look at the subscriber rate, 16 the monthly rate charged by the system to cable 17 subscribers, you see it is \$17.95 a month in '92 and 18 \$30.27 in '98. 19 AUh-huh. 20 QIs that also typical of Century systems, 21 that kind of increase over that six-year period? 22 AI don't remember the specifics, but -- nor</p>

<p style="text-align: right;">Page 6082</p> <p>1 was I in charge of this decision, but was it our 2 policy to take -- to maximize price increases, if 3 possible, for their resultant revenue increases on 4 profit impact? Yes, it was. 5 QAnd the subscribers also increased over 6 this six-year period, notwithstanding the price 7 increase? 8 ARight. 9 QNext I would like to show you -- 10 MR. STEWART: Well, I would like to move 11 this for impeachment purposes. 12 MR. COOPER: No objection. 13 JUDGE von KANN: Okay. So received. 14 (Whereupon, the aforementioned 15 document, having previously 16 been marked for identification 17 as NAB Exhibit Number 28-X, was 18 received in evidence.) 19 JUDGE von KANN: I should note that I may 20 be the only person in this room who has actually been 21 to Enterprise, Dozier, and Dothan, Alabama. 22 BY MR. STEWART:</p>	<p style="text-align: right;">Page 6084</p> <p>1 thought it was -- 2 (Whereupon, the aforementioned 3 document was marked for 4 identification as NAB Exhibit 5 Number 29-X.) 6 BY MR. STEWART: 7 QThis next exhibit, 29-X, is the same kind 8 of data. 9 AUh-huh. 10 QAnd this is for the Century system serving 11 Los Angeles. This is the one owned by Century 12 Communications, correct? 13 ARight. 14 QJust looking here, in 1992, the system 15 carried three distant signals. 16 AUh-huh. 17 QThey were WTBS and WWOR there at the top 18 and at the bottom, -- this came out alphabetically; so 19 the X is at the bottom -- KDOC in Anaheim, California. 20 Do you see that? 21 AWhich would be partially distant. 22 QPartially distant. Correct.</p>
<p style="text-align: right;">Page 6083</p> <p>1 QHave you been there? 2 AYou know, I was just kind of thinking 3 about that. I remember at one point around the 4 re-regulations that we flew around a whole bunch of 5 our smaller systems, but I don't recall whether I went 6 to Enterprise. So if I did, it wasn't memorable. I 7 apologize. 8 JUDGE von KANN: In 1964, my father was 9 stationed at Fort Rucker, Alabama, just outside. And 10 I visited there. 11 MR. STEWART: I would like to have marked 12 as 29-X 13 JUDGE von KANN: In one of those three 14 towns, -- and I cannot remember which it was -- there 15 is erected in the center of the town a statue to the 16 boll weevil. And the reason is that for years and 17 years, the community had been farming cotton. 18 Finally, the boll weevil came along, 19 decimated the cotton crop. And they all switched to 20 peanuts and tripled their revenue. And they have been 21 in peanuts ever since. So they erected a statue to 22 the boll weevil in the center of the town. I always</p>	<p style="text-align: right;">Page 6085</p> <p>1 Now, if you turn to the 1998 page, you see 2 that the system carries zero distant signals and 19 3 local signals. This reflects the fact that this 4 phenomenon was particularly acute in large markets, as 5 you were discussing? 6 ARight. 7 QKDOC is still carried by the system. Do 8 you see that? 9 AUh-huh. 10 QIn alphabetical order. Because it is now 11 considered as a local, rather than a partially distant 12 signal. Okay? 13 AUh-huh. I saw that. 14 QNow, do the systems change the area that 15 they serve? Strike that. I'm going to talk about 16 that later. 17 So the two distant signals that were 18 dropped by this system were WTBS and WWOR, correct? 19 AUh-huh. Yes. 20 QBut neither of those stations was 21 available as a distant signal in 1998, correct, in Los 22 Angeles?</p>

<p style="text-align: right;">Page 6086</p> <p>1 AI believe that's correct.</p> <p>2 QBecause WWOR went off the satellite in</p> <p>3 '97. WTBS converted to a cable network in '98, right?</p> <p>4 ARight.</p> <p>5 QAnd the system continued to carry KDOC,</p> <p>6 which had been its third partially distant signal</p> <p>7 before, correct?</p> <p>8 ACorrect.</p> <p>9 QSo this is another example of a situation</p> <p>10 in which, notwithstanding the addition of new</p> <p>11 must-carry stations in the market, the system didn't</p> <p>12 drop a distant signal that was available to it in</p> <p>13 1998?</p> <p>14 AWell, it didn't have anything else to drop</p> <p>15 would be the way I would look at it. TBS I'm sure</p> <p>16 stayed on the system. It converted, and WWOR went</p> <p>17 away. So if WWOR hadn't gone away, perhaps they would</p> <p>18 have been forced to drop it.</p> <p>19 QPerhaps they would have been, but, in</p> <p>20 actual fact, this system didn't drop any distant</p> <p>21 signal in '98 in order to make room for a must-carry</p> <p>22 station, correct?</p>	<p style="text-align: right;">Page 6088</p> <p>1 AWell, I'm not intimately familiar with the</p> <p>2 copyright rules, but I don't think so. I thought the</p> <p>3 royalties were exclusively for distant signals.</p> <p>4 QIf I represent to you that the law is that</p> <p>5 a cable operator is not permitted to carry any signals</p> <p>6 unless it files a statement of account under the</p> <p>7 compulsory license, --</p> <p>8 AOkay.</p> <p>9 Q-- then, even for a system that doesn't</p> <p>10 carry any distant signals, there might still be a</p> <p>11 reason for that system to pay royalties and to file a</p> <p>12 statement of account, correct?</p> <p>13 AAccording to what you just said, for</p> <p>14 permission to be able to carry any signals, local or</p> <p>15 distant.</p> <p>16 QRight. Given that --</p> <p>17 AOkay. If that were true, yes.</p> <p>18 QThen it would make sense that these</p> <p>19 systems were paying royalties, even though they</p> <p>20 carried no distant signals, --</p> <p>21 AYes, it would.</p> <p>22 Q-- to be able to continue to offer the</p>
<p style="text-align: right;">Page 6087</p> <p>1 AIn actual fact, that appears to be the</p> <p>2 case.</p> <p>3 QNow, one thing I wanted to talk to you a</p> <p>4 bit about in the context of the Enterprise, Alabama</p> <p>5 system -- and it's true as well for Los Angeles -- in</p> <p>6 1998, the system carried no distant signal but still</p> <p>7 paid royalties.</p> <p>8 AUh-huh.</p> <p>9 QIt still filed a statement of account.</p> <p>10 AUh-huh. Yes.</p> <p>11 QFirst, for Enterprise, why was that?</p> <p>12 AWell, in 1998, the second half of the</p> <p>13 year, I was no longer with Century. So I can only</p> <p>14 speculate. I wasn't involved in those decisions.</p> <p>15 QDo you know generally whether Century had</p> <p>16 systems that carried no distant signals but still paid</p> <p>17 royalties to the Copyright Office?</p> <p>18 AI would not be surprised if that were the</p> <p>19 case, yes.</p> <p>20 QIs it the case that a cable operator is</p> <p>21 required to pay royalties in order to carry local</p> <p>22 stations?</p>	<p style="text-align: right;">Page 6089</p> <p>1 local stations to their subscribers?</p> <p>2 AI think we discussed that earlier.</p> <p>3 QExactly.</p> <p>4 AYes.</p> <p>5 QDo you have any specific knowledge about</p> <p>6 what considerations went into -- I'm sorry. Let me</p> <p>7 start over.</p> <p>8 Are you aware of any discussions about</p> <p>9 this phenomenon that these systems are now carrying no</p> <p>10 distant signals but we still have to pay royalties?</p> <p>11 AIn very, very general and hazy terms, I</p> <p>12 recall that that was something that was acknowledged.</p> <p>13 QDo you remember in what context or what</p> <p>14 the discussion was about?</p> <p>15 AWell, as I think I tried to refer to in my</p> <p>16 testimony, my recollection of the whole period of the</p> <p>17 '90s was a period of increasing concern around channel</p> <p>18 capacity and, therefore, a constant evaluation and</p> <p>19 reevaluation of the value of all channels being</p> <p>20 carried on a cable system and whether that meant</p> <p>21 needed to create space for multiflexing to improve HBO</p> <p>22 subscribers or you needed to add pay-per-view in order</p>

<p style="text-align: right;">Page 6090</p> <p>1 to have more variety to your offerings or there were 2 new retransmission consent-related channels that we 3 were forced to carry.</p> <p>4 It was just a period of time where we were 5 under constant pressure trying to evaluate the right 6 decisions. So I think the idea that a copyright 7 filing is mandatory, even if you don't carry a distant 8 signal, that would just be part of the kind of overall 9 weighing of competing priorities that we were 10 struggling with.</p> <p>11 JUDGE GULIN: Can you think of any reason 12 other than a channel capacity issue why a cable 13 operator would not carry a distant signal if he had to 14 pay no more, the system didn't have to pay any more 15 royalties, to carry that signal other than the minimum 16 fee?</p> <p>17 THE WITNESS: Channel capacity has all 18 sorts of forms to it in terms of the way I think about 19 it, leveraged negotiations with other programmers, all 20 sorts of things like that. But if you take channel 21 capacity at its broadest in its broadest terms, I 22 can't right now think of any other reason.</p>	<p style="text-align: right;">Page 6092</p> <p>1 lowest level limited basic. And those are what we 2 refer to in the industry as PEG channels, public, 3 educational, or government channels, various 4 franchise-mandated local access channels.</p> <p>5 So it's very unlikely -- I don't remember 6 what their actual number was, but I am sure that the 7 lowest level of service in Los Angeles was more than 8 20.</p> <p>9 JUDGE von KANN: Well, accepting all of 10 that, Judge Gulin was just asking you whether there 11 would be any reason you could think of why if they 12 didn't have to pay any more and they had the capacity 13 to add a distant signal, why not do it.</p> <p>14 JUDGE YOUNG: You have some cable networks 15 on your basic system.</p> <p>16 JUDGE von KANN: Right. Well, my --</p> <p>17 THE WITNESS: Right.</p> <p>18 JUDGE von KANN: I guess what I want to 19 put to you is the following hypothesis, which is if 20 you got to be a system where maybe you are down to one 21 or two left last slots on your basic --</p> <p>22 THE WITNESS: Right.</p>
<p style="text-align: right;">Page 6091</p> <p>1 JUDGE von KANN: Let me follow that a tiny 2 bit with this exhibit Mr. Stewart has just shown you, 3 29-X. The second page of it, the 1998 period, I guess 4 if I'm reading this right, -- help me here -- we've 5 got 19 local signals.</p> <p>6 And you referred a couple of times to 20 7 as being frequently the cutoff point in limited basic 8 or whatever. Does that suggest that this station has 9 maybe one free slot left?</p> <p>10 THE WITNESS: No. First of all, I used 20 11 as an example. I didn't use 20 as typical.</p> <p>12 JUDGE von KANN: Okay.</p> <p>13 THE WITNESS: Second of all, when you 14 looked at all of the Century systems, our Los Angeles 15 operation was not typical. It was more -- it had more 16 capacity. It had more local broadcasters. It had a 17 whole unique set of circumstances. It was also very 18 important to us based on its size and demographics. 19 So it's not typical.</p> <p>20 And the third thing I would want to 21 explain is there are other channels that we are 22 required under franchise regulations to include in the</p>	<p style="text-align: right;">Page 6093</p> <p>1 JUDGE von KANN: And we heard some 2 testimony from other people that once you put a 3 channel on --</p> <p>4 THE WITNESS: It's hard.</p> <p>5 JUDGE von KANN: So I guess I could see a 6 situation where somebody could say, "Yeah. We really 7 could add a distant signal here. We don't have to pay 8 any more royalties. And, yeah, we've got one slot 9 left. But let's not eliminate our options for the 10 future because if we stick the Pony Channel on there, 11 then we're done and then something really good comes 12 along next year, we've got a problem."</p> <p>13 So that channel capacity, it strikes me, 14 might not be absolutely every available slot. You 15 might want to leave yourself a couple of open slots 16 for purposes of future options. I mean, I don't know. 17 Does that make --</p> <p>18 THE WITNESS: You would make a good cable 19 operator.</p> <p>20 JUDGE von KANN: Okay.</p> <p>21 THE WITNESS: That is exactly right.</p> <p>22 JUDGE von KANN: All right.</p>

<p style="text-align: right;">Page 6094</p> <p>1 BY MR. STEWART:</p> <p>2 QJust looking at this exhibit 29-X again,</p> <p>3 this Los Angeles system increased its activated</p> <p>4 channel capacity from 60 to 79 over that period,</p> <p>5 correct?</p> <p>6 AUh-huh. Yes.</p> <p>7 QSo that's 19 channels that were added. It</p> <p>8 increased the channels devoted to television stations</p> <p>9 by four, correct?</p> <p>10 ARight.</p> <p>11 QSo the net increase in overall capacity,</p> <p>12 putting to one side the question of the limited basic</p> <p>13 cap, increased by significantly more than the number</p> <p>14 of must-carry stations increased?</p> <p>15 AIn that specific situation, but, as I</p> <p>16 explained before, many of those incremental channels</p> <p>17 added the technical ability for incremental channels</p> <p>18 could easily have gone to multiplexed premiums, which</p> <p>19 are a profit area for cable systems.</p> <p>20 Several of those channels probably went</p> <p>21 since it was Los Angeles to America's Talking to ESPN</p> <p>22 to FX and, you know, those kind of retransmission</p>	<p style="text-align: right;">Page 6096</p> <p>1 QIn deciding whether it made more sense to</p> <p>2 add a new distant signal in the place of WTBS and</p> <p>3 WWOR, which were no longer available, as opposed to</p> <p>4 simply paying the full minimum fee and not carrying</p> <p>5 any distant signals, Century would have simply weighed</p> <p>6 the cost-benefit, the costs and benefits, of all the</p> <p>7 alternatives available to it, correct?</p> <p>8 AThat's correct.</p> <p>9 QSo that if it made more sense from a</p> <p>10 cost-benefit perspective for it to add a cable network</p> <p>11 on a higher tier than to use the channel capacity to</p> <p>12 go out and get another distant signal, it would have</p> <p>13 made that decision?</p> <p>14 AThat's correct.</p> <p>15 QAnd that would have been simply a way of</p> <p>16 maximizing the cable operators' own financial</p> <p>17 interest, profit-maximizing behavior, correct?</p> <p>18 AWell, that's -- we're in the business of</p> <p>19 attracting and retaining and pleasing our subscribers,</p> <p>20 who pay us monthly fees, that ultimately hopefully</p> <p>21 does exceed our expenses.</p> <p>22 QNow, have we sort of gone from one extreme</p>
<p style="text-align: right;">Page 6095</p> <p>1 consent-created channels that we were forced to carry</p> <p>2 between -- that started after '92.</p> <p>3 So, in other words, it wasn't as if we got</p> <p>4 this heyday of 19 free channels, how should we think</p> <p>5 about using them. And that's why we were in this --</p> <p>6 even though we were adding technical capacity, there</p> <p>7 were increasing demands on the space.</p> <p>8 QSure. And, in fact, there probably were</p> <p>9 more available program services in excess of your</p> <p>10 channel capacity in '98 than there were in '92?</p> <p>11 AThat's correct.</p> <p>12 QNow, turning back to the question of the</p> <p>13 limited basic here, do you know whether the Los</p> <p>14 Angeles system was one of the ones that removed the</p> <p>15 trap to increase the number of channels in that lowest</p> <p>16 tier?</p> <p>17 AI do not have very precise recollections</p> <p>18 of exactly how we did this, but I do recall that there</p> <p>19 was much discussion about how to reconfigure tiers in</p> <p>20 reaction to rate regulation in order to put some</p> <p>21 channels into an optional level of service and,</p> <p>22 therefore, not be forced to roll back rates.</p>	<p style="text-align: right;">Page 6097</p> <p>1 to the other for Century, the Enterprise, Alabama and</p> <p>2 Los Angeles systems?</p> <p>3 AThat would be a pretty good example of the</p> <p>4 diversity of our cable systems.</p> <p>5 QI want to show you one more example. I</p> <p>6 actually have 35 of them. So I want some credit for</p> <p>7 only showing you this next one.</p> <p>8 AWho's supposed to give you the credit?</p> <p>9 MR. STEWART: I would like to have marked</p> <p>10 as exhibit 30-X, but first I would like to move the</p> <p>11 admission of 29-X for impeachment purposes.</p> <p>12 MR. COOPER: No objection.</p> <p>13 JUDGE von KANN: So received.</p> <p>14 (Whereupon, the aforementioned</p> <p>15 document, having previously</p> <p>16 been marked for identification</p> <p>17 as NAB Exhibit Number 29-X, was</p> <p>18 received in evidence.)</p> <p>19 MR. STEWART: 30-X is another one of these</p> <p>20 same types of exhibits for a system in Morgantown.</p> <p>21 (Whereupon, the aforementioned</p> <p>22 document was marked for</p>

<p style="text-align: right;">Page 6098</p> <p>1 identification as NAB Exhibit 2 Number 30-X.) 3 BY MR. STEWART: 4 QFirst, this Morgantown, West Virginia 5 system is owned by Century Communications? 6 AYes, sir. I recall that. 7 QHave you been to Morgantown? 8 AI have been to Morgantown and to Los 9 Angeles, just not Enterprise. 10 QNow, first, in 1992, the system carried 11 one distant signal, WTBS, and nine local signals. Do 12 you see that? 13 AYes, I do. 14 QIt had 36 activated channels? 15 AYes. 16 QAnd charged \$17.45 a month? 17 AUh-huh. 18 QThat's correct, right? 19 AThat looks correct according to this form. 20 QRight. In 1998, according to the data, 21 the system carried five distant or partially distant 22 signals and three local signals. In fact, all of the</p>	<p style="text-align: right;">Page 6100</p> <p>1 several Pittsburgh stations were carried on a local 2 basis in '92 and on a partially distant basis in '98. 3 Would that suggest to you that the system had expanded 4 in a direction away from Pittsburgh and had 5 subscribers that were now distant that it hadn't had 6 before? 7 AThat was my guess. I immediately noticed 8 this when you gave it to me. And that would be my 9 guess as to what happened. 10 QOkay. And, in general, I guess you said 11 that Century was looking to expand its territories 12 during this period, '92 to '98? 13 AWell, Century was not unusual in that 14 regard. I would say cable operators in general where 15 it made sense, where it was cost-efficient would 16 always extend their plant out beyond to reach more 17 consumers. 18 QAnd Century and other cable operators also 19 were acquiring new systems in new areas that they 20 hadn't served previously? 21 AI think in the period of the '90s, there 22 was quite a bit of MSO acquisition and consolidation</p>
<p style="text-align: right;">Page 6099</p> <p>1 five were partially distant signals. Do you see that? 2 AYes, I do. 3 QAnd had increased its channel capacity to 4 53 activated channels and increased its subscriber 5 rate to \$27.35. Do you see that? 6 AYes, I do. 7 QIt also increased its subscribers from 8 22,000 to 30,000. Do you see that? 9 AYes, I do. 10 QNow, is this an example of a system that 11 has expanded its territory or has somehow otherwise 12 changed the scope of the system? 13 AI don't recall the specifics, but as part 14 of our rebuilding efforts, we were constantly 15 expanding into new neighborhoods and new subdivisions 16 and the like as it was possible. 17 So there were two efforts. There was the 18 rebuilding of the core system and the expanding into 19 the outer edges, wherever it made sense 20 demographically, if you will. There were new people, 21 new subdivisions. 22 QIf you see, the Pittsburgh stations or</p>	<p style="text-align: right;">Page 6101</p> <p>1 and system swaps at the same time. So yes, I think 2 there was a clear understanding that it was more 3 cost-efficient to standardize offerings and bring what 4 had been a lot of little local systems together and 5 operate them in a more aggregated manner. And so 6 cable operators were buying and selling systems in 7 order to make more geographic logic out of their 8 offerings. 9 QThis example of Morgantown, West Virginia 10 also is one in which there wasn't a squeezing out of 11 distant signals because of new must-carry stations, 12 correct? 13 AThat's what it appears. 14 QBecause of the changes in the cable 15 marketplace, there presumably would have been lots of 16 cases in which the system was just changing and the 17 carriage, complement of stations being carried, by the 18 system changed without regard to the must-carry rules, 19 correct? 20 AI'm sorry? Could you say that again? 21 QWell, this is an example in which the 22 number of distant signals actually increased from one</p>

<p style="text-align: right;">Page 6102</p> <p>1 to five or five partially distant signals.</p> <p>2 AWe think that was due to -- we are</p> <p>3 hypothesizing that that was due to the decisions of</p> <p>4 the system.</p> <p>5 QI guess I am simply asking, there would</p> <p>6 have been lots of other systems making similar changes</p> <p>7 that resulted in a change in the distant and local</p> <p>8 stations they carried. It had nothing to do with the</p> <p>9 must-carry rules during this period, '92 to '98,</p> <p>10 correct?</p> <p>11 AThat is probably correct.</p> <p>12 MR. STEWART: Thank you. I have no</p> <p>13 further questions.</p> <p>14 JUDGE von KANN: Do you move 30-X for</p> <p>15 impeachment?</p> <p>16 MR. STEWART: For impeachment purposes,</p> <p>17 yes.</p> <p>18 MR. COOPER: No objection.</p> <p>19 JUDGE von KANN: So received.</p> <p>20 (Whereupon, the aforementioned</p> <p>21 document, having previously</p> <p>22 been marked for identification</p>	<p style="text-align: right;">Page 6104</p> <p>1 have statistics. But that was the later stages of</p> <p>2 rebuilding. Many, many systems had been rebuilt, but</p> <p>3 channel capacity was being reserved for future</p> <p>4 offerings, such as high-speed data and telephony,</p> <p>5 video on demand, pay-per-view.</p> <p>6 So my guess is in '98 and '99, you started</p> <p>7 to see capacity that technically existed but for</p> <p>8 strategic reasons was not being filled with analog</p> <p>9 video channels.</p> <p>10 QI guess this maybe goes to the kind of</p> <p>11 different definitions of capacity you were talking</p> <p>12 about earlier. I guess what I am asking is whether</p> <p>13 cable systems were operating at more or less their</p> <p>14 full channel capacity with regard to the channels that</p> <p>15 were set aside for the carriage of --</p> <p>16 AAnalog video?</p> <p>17 Q-- analog video. Yes.</p> <p>18 AProbably so, yes.</p> <p>19 QAnd I take it you would agree that channel</p> <p>20 capacity at any given time is a constraint on the</p> <p>21 operations of a cable system?</p> <p>22 AIt is today. In the very, very early days</p>
<p style="text-align: right;">Page 6103</p> <p>1 as NAB Exhibit Number 30-X, was</p> <p>2 received in evidence.)</p> <p>3 JUDGE von KANN: Thank you, Mr. Stewart.</p> <p>4 Okay. Who is next?</p> <p>5 MR. DOVE: I am, Your Honor.</p> <p>6 JUDGE von KANN: Okay.</p> <p>7 MR. DOVE: Good afternoon, Ms. Allen. My</p> <p>8 name is Ron Dove, and I am counsel for the Public</p> <p>9 Television Claimants.</p> <p>10 CROSS-EXAMINATION</p> <p>11 BY MR. DOVE:</p> <p>12 QMs. Allen, you have spoken a good bit</p> <p>13 about channel capacity. So I don't really want to</p> <p>14 belabor it too much longer. I just have a few</p> <p>15 follow-up questions.</p> <p>16 You talk about each cable system obviously</p> <p>17 has a certain channel capacity. Is that correct?</p> <p>18 AThat is correct.</p> <p>19 QDuring 1998 and 1999, would it be fair to</p> <p>20 say that cable systems were typically operating at</p> <p>21 more or less full channel capacity?</p> <p>22 AProbably not, although, again, I don't</p>	<p style="text-align: right;">Page 6105</p> <p>1 of cable, there was more of a desire for programming</p> <p>2 because there weren't so many choices. So things got</p> <p>3 put on just in order to have some sort of a -- as</p> <p>4 robust as possible of an offering.</p> <p>5 So I think there has been a change from</p> <p>6 the birth of cable to today, but today or during the</p> <p>7 period of the '90s that we're talking about, yes.</p> <p>8 Channel capacity is a major constraint.</p> <p>9 QSo obviously there are many more</p> <p>10 programming choices available than there were</p> <p>11 available channels back in 1998-1999. Is that</p> <p>12 correct?</p> <p>13 AThat's correct.</p> <p>14 QAnd the cable operator often has to make</p> <p>15 difficult choices. Is that correct?</p> <p>16 AThat's correct.</p> <p>17 QDo you know approximately how many cable</p> <p>18 networks were there to choose from in the 1998-1999</p> <p>19 time frame in terms of the options that you had as a</p> <p>20 cable operator?</p> <p>21 AWell, I guess it depends a little bit on</p> <p>22 how you count because do you start counting all of</p>

<p style="text-align: right;">Page 6106</p> <p>1 these multiple HBO channels and multiple Showtime 2 channels as incremental channels or just -- you know, 3 it depends on how you count an individual channel, but 4 it's well over 100. I think I heard once about 200. 5 QAbout 200 cable network options available, 6 correct? 7 AThat would be my guess. 8 QAnd then I guess technically you had this 9 whole universe of distant signals that you could 10 theoretically choose from from all over the United 11 States, correct? 12 AWell, I don't think technically it's easy 13 to get distant signals in that aren't physically 14 somewhat near. You know, all cable channels are put 15 on satellite so there is an easy way to download them 16 and put them on your cable system. 17 I mean, if I, for some reason, wanted the 18 Enterprise, Alabama fare on in Los Angeles, I think 19 that would be a technical challenge, but on a 20 theoretical basis, I guess you're right. 21 QJust in summary, you would have at least 22 200 cable network channels available plus --</p>	<p style="text-align: right;">Page 6108</p> <p>1 page 4? You state that the value of a distant signal 2 to a cable system, page 5, can be measured only by its 3 ability to attract and retain subscribers. Do you see 4 that? 5 AYes. 6 QWhat do you mean by that? 7 AWell, what I mean is there are no other 8 potential sources of revenue that might be associated 9 with a distant signal to also create a reason to carry 10 it. 11 QWould you agree that in order to attract 12 and retain subscribers, that cable operators try to 13 choose types of programming that are attractive to at 14 least some subset of subscribers or potential 15 subscribers? 16 AYes, I would agree. 17 QAnd I take it that in order to attract and 18 retain the most subscribers, cable operators try to 19 offer a diverse mix of programming, something for 20 everyone. Is that correct? 21 AAs best as it is possible, yes. 22 QWe have heard this diversity described as</p>
<p style="text-align: right;">Page 6107</p> <p>1 ALocal and distant channels. 2 Q-- local and distant channels of a fairly 3 large number that would be available as well, correct? 4 AOkay. Yes. 5 QSo, then, I take it you would agree that 6 when a cable operator decides to actually bring in a 7 distant signal, it's foregoing other programming 8 opportunities? 9 AYes. 10 QAnd, put another way, there are cable 11 channels and various sources of programming that a 12 cable operator doesn't carry that the operator would 13 carry if it had more capacity, correct? 14 AI think I was asked that question before. 15 QYou may have been. 16 ABut, I mean, just generally speaking, if 17 capacity were not an issue, there's also the issue of 18 cost. But if capacity and cost, sure, and you had a 19 technical way to offer lots more channels, we would do 20 it. 21 QIf you could turn to page 4 of your 22 testimony, please, and specifically the last line on</p>	<p style="text-align: right;">Page 6109</p> <p>1 a bouquet of options. Would you agree with that 2 characterization as to what the cable operator is 3 trying to do? 4 AI guess so. I hadn't heard that, but I 5 haven't been here as long as all the rest of you. 6 QIn a nutshell, why do cable operators want 7 to offer a bouquet of options? I mean, why not just 8 have movies and syndicated shows on every channel all 9 day, all night? Why not do it that way? I mean, why 10 do we want to have this diverse mix of programming? 11 ABecause then we couldn't offer Public 12 Television, right? 13 QOn to page 5. On page 5, you state -- I 14 believe this is near the top -- that "A distant signal 15 must provide unique programming not available for 16 other sources that generates a loyal following." Do 17 you see that? 18 AI do see that. 19 QWhy is it that cable operators value 20 unique programming? 21 ABecause I don't think we would sell a lot 22 of subscriptions if all we did was put on the same</p>

<p style="text-align: right;">Page 6110</p> <p>1 movies and syndicated programming and all of the -- if</p> <p>2 every channel looked alike.</p> <p>3 We're trying to put together -- I guess a</p> <p>4 bouquet is not a bad analogy. We're trying to put</p> <p>5 together a grouping of channels that will appeal to</p> <p>6 the widest number of subscribers possible.</p> <p>7 And one way to get to decide which</p> <p>8 channels should be in that grouping is to see how many</p> <p>9 different possible audiences one can reach.</p> <p>10 QWould you agree that cable operators want</p> <p>11 to provide high-quality programs to their subscribers?</p> <p>12 ASure.</p> <p>13 QAnd why would cable operators want to do</p> <p>14 that?</p> <p>15 AI'm afraid I'm going to get in trouble</p> <p>16 again. It beats low-quality programs.</p> <p>17 QI'll take that.</p> <p>18 AOkay.</p> <p>19 JUDGE von KANN: We won't explore how that</p> <p>20 relates to worldwide wrestling versus the symphony.</p> <p>21 THE WITNESS: The truth is then the answer</p> <p>22 has got to be the quality is in the eye of the</p>	<p style="text-align: right;">Page 6112</p> <p>1 there that --</p> <p>2 AI do. I do. So as much as that that's a</p> <p>3 potential target, then yes, we're interested in</p> <p>4 offering that kind of programming.</p> <p>5 QAnd it is a potential target, right? I</p> <p>6 mean, if we've got the potential target for a cable</p> <p>7 operator, you would want to reach people who had an</p> <p>8 interest in learning more about their world, the world</p> <p>9 in which they live?</p> <p>10 AI think that is one of the reasons we</p> <p>11 carry news programming and documentary programming and</p> <p>12 other high-quality channels, yes.</p> <p>13 QWould you agree that cable operators want</p> <p>14 to provide programs that appeal to subscribers over</p> <p>15 the age of 50?</p> <p>16 AYes.</p> <p>17 QMy colleague Mr. Hester always tells me to</p> <p>18 ask the why question. So why would you want to do</p> <p>19 that? Why would we care about subscribers over the</p> <p>20 age of 50?</p> <p>21 AWell, they pay their bills. Generally</p> <p>22 because that's an increasing demographic. And so</p>
<p style="text-align: right;">Page 6111</p> <p>1 beholder. I mean, there is stuff that people in this</p> <p>2 room would find high-quality and someone else in this</p> <p>3 room might find objectionable.</p> <p>4 BY MR. DOVE:</p> <p>5 QWould you agree that cable operators want</p> <p>6 to provide programs that the whole family can watch?</p> <p>7 AYes, I would.</p> <p>8 QAnd why would you think that?</p> <p>9 ABecause families are one of the</p> <p>10 demographics that we are trying to appeal to. And one</p> <p>11 of the appeals we think of cable television is that we</p> <p>12 can be connected to multiple televisions in the house.</p> <p>13 So multiple members of the family can watch different</p> <p>14 channels to their liking throughout the home. So</p> <p>15 families are a target for us.</p> <p>16 QWould you agree that cable operators want</p> <p>17 to provide programs that help viewers better</p> <p>18 understand their world?</p> <p>19 ANo, not as a particular objective unless</p> <p>20 there are potential subscribers and subscribers who</p> <p>21 are interested in understanding their world better.</p> <p>22 QDo you think there are subscribers out</p>	<p style="text-align: right;">Page 6113</p> <p>1 there are increasing numbers of people who are over</p> <p>2 the age of 50 for whom we want them to be subscribers</p> <p>3 and to continue to be subscribers.</p> <p>4 JUDGE YOUNG: You know, we have been told</p> <p>5 by a number of witnesses that the target audience for</p> <p>6 commercial TV advertising is under 50.</p> <p>7 THE WITNESS: Yes, that is true.</p> <p>8 JUDGE YOUNG: Is there any inconsistency</p> <p>9 between those?</p> <p>10 THE WITNESS: Well, that's why I thought</p> <p>11 for a moment when I said that. I mean, frankly, we're</p> <p>12 much more -- I mean, the cable television economics is</p> <p>13 driven by people who write monthly checks to subscribe</p> <p>14 to the service. We don't care what age you are as</p> <p>15 long as you're satisfied enough with the offering that</p> <p>16 you continue to write that subscription check.</p> <p>17 That is different than broadcasters who</p> <p>18 are driven by advertising and, therefore, need to</p> <p>19 charge the maximum dollars to potential advertisers</p> <p>20 who are interested in age groups they believe are</p> <p>21 still not set in their brand loyalties.</p> <p>22 Does that make sense?</p>

<p style="text-align: right;">Page 6114</p> <p>1 JUDGE YOUNG: Yes.</p> <p>2 THE WITNESS: Okay.</p> <p>3 MR. DOVE: Only a couple more of these</p> <p>4 types of questions.</p> <p>5 BY MR. DOVE:</p> <p>6 QFollowing up on that line, would you agree</p> <p>7 that cable operators want to provide programs that</p> <p>8 appeal to more affluent subscribers?</p> <p>9 AYes.</p> <p>10 QI take it --</p> <p>11 AAnd why is that?</p> <p>12 QYes, for the --</p> <p>13 AThey are better at paying their bills or</p> <p>14 they can be.</p> <p>15 QI take it more affluent subscribers might</p> <p>16 also be more willing to purchase other cable network</p> <p>17 products, pay --</p> <p>18 AYeah. More affluent subscribers can be</p> <p>19 better targets for premium television as well as now</p> <p>20 -- and this is kind of past the time of this</p> <p>21 proceeding -- high-speed data internet access, cable</p> <p>22 telephony, other services.</p>	<p style="text-align: right;">Page 6116</p> <p>1 AYes, I do.</p> <p>2 QNow, WGN is not the only place that a</p> <p>3 cable subscriber could go to watch live team sports.</p> <p>4 Is that correct?</p> <p>5 AThat's correct.</p> <p>6 QIn fact, in 1998 and 1999, there were a</p> <p>7 lot of different places that a cable operator could go</p> <p>8 to watch live team sports. Is that correct?</p> <p>9 AYes.</p> <p>10 QAnd I believe you discussed with Mr.</p> <p>11 Stewart earlier one option would have been regional</p> <p>12 sports networks?</p> <p>13 ARight.</p> <p>14 QCorrect?</p> <p>15 AThat's correct.</p> <p>16 QI take it other options would include</p> <p>17 ESPN, correct?</p> <p>18 AYes.</p> <p>19 QESPN 2, correct?</p> <p>20 ACorrect.</p> <p>21 QMSG, Madison Square Gardens, correct?</p> <p>22 AYes.</p>
<p style="text-align: right;">Page 6115</p> <p>1 QFinally, would you agree that cable</p> <p>2 operators want to provide educational programs for</p> <p>3 children?</p> <p>4 AYes.</p> <p>5 QWhy is that?</p> <p>6 AIt resonates well not only with parents</p> <p>7 but with local franchise officials and community</p> <p>8 leaders, who feel good about having educational</p> <p>9 programming on a cable system.</p> <p>10 QI'm flipping through pages of questions</p> <p>11 that I was going to ask that I am not anymore. I've</p> <p>12 narrowed this down a little bit more.</p> <p>13 I would like to turn to a new topic. And</p> <p>14 to do that, I would like you to turn to I guess page</p> <p>15 -- well, I guess we are already on page 5. Let's look</p> <p>16 at the first full paragraph on page 5, where you</p> <p>17 discuss WGN. Do you see that?</p> <p>18 AYes, I do.</p> <p>19 QNow, WGN, you talk in this paragraph about</p> <p>20 WGN being a place that one could go watch the Chicago</p> <p>21 Cubs and the White Sox and the Chicago Bulls. Do you</p> <p>22 see that?</p>	<p style="text-align: right;">Page 6117</p> <p>1 QTNT?</p> <p>2 AI don't remember if TNT had -- are we</p> <p>3 talking baseball only or just live professional</p> <p>4 sports?</p> <p>5 QLive professional sports.</p> <p>6 AThat's correct, TNT. Yes.</p> <p>7 QHow about were there any other sources</p> <p>8 that you can think of for live professional sports in</p> <p>9 the 1998-1999 time frame?</p> <p>10 AI think you got the -- I think you named</p> <p>11 the biggest ones.</p> <p>12 QIt's also obviously network television,</p> <p>13 correct?</p> <p>14 ACorrect.</p> <p>15 QWhat about did Major League Baseball</p> <p>16 provide a package of premium baseball game programming</p> <p>17 that subscribers could purchase back in the 1998 to</p> <p>18 1999 time frame?</p> <p>19 AAs a separate a la carte option like the</p> <p>20 sports packages that DirecTV offered? I don't think</p> <p>21 --</p> <p>22 QSimilar to NFL Sunday Ticket, yes.</p>

<p style="text-align: right;">Page 6118</p> <p>1 AI don't recall in '98-'99 that they had a 2 baseball option. But they added one. So I don't know 3 when it started. 4 QOkay. Is it possible that they had it in 5 1998-1999? You just don't recall? 6 AWell, at the time, none of those 7 professional sports out-of-market season ticket 8 packages were available to cable operators in '98 and 9 '99. They were only available through DirecTV, which, 10 if I can finish, it just occurred to me is a reason 11 that the sports programming we could get access to as 12 cable operators was so much more important, because we 13 knew that DirecTV had a sports focus to its marketing. 14 And we needed to do whatever we could to shore up our 15 sports offering. 16 QFocusing from kind of the generalized 17 sports offering, just let's focus on the Cubs for a 18 minute, Chicago Cubs. Where could a diehard Cubs fan 19 have gone to watch Cubs games in 1998-99 other than 20 Wrigley Field? Where could a Cubs fan have gone if 21 they wanted to watch Cubs on television for some 22 reason?</p>	<p style="text-align: right;">Page 6120</p> <p>1 Jordan. Do you see that? 2 AYes. 3 MR. DOVE: I would like to mark as PTV 4 exhibit 15-X a page from the official Chicago Bulls 5 Web site at -- 6 (Whereupon, the aforementioned 7 document was marked for 8 identification as PTV Exhibit 9 Number 15-X.) 10 JUDGE von KANN: What number, Mr. Dove? 11 MR. DOVE: This is, I believe, 15-X. 12 JUDGE von KANN: Okay. 13 BY MR. DOVE: 14 QAs I said, I printed this off the NBA.com 15 Web site. It lists kind of the Chicago Bulls history, 16 some of the highlights of their history, and their 17 records for the seasons 1966 through 2002. Do you see 18 that? 19 AYes, I do. 20 QNow, were you aware that Michael Jordan 21 didn't play during the 1998-1999 NBA season? 22 ANo, I wasn't, but I think we already</p>
<p style="text-align: right;">Page 6119</p> <p>1 AWGN, I believe. 2 QWGN is one option. They could see some 3 games on WGN. 4 ARight. 5 QWhere else might they be able to watch -- 6 AWell, I think there was a baseball package 7 on ESPN. 8 QOkay. ESPN. 9 AOr ESPN2. I don't know which it was. The 10 Cubs playing against other -- regional sports. 11 QAnd also I take it on local networks as 12 well, correct? 13 AAnd also on local networks. Sorry. Yes. 14 QHow about for the Chicago Bulls? Where 15 would a diehard Bulls fan have gone to watch Chicago 16 Bulls games in 1998-1999? Would it be the same group 17 of -- 18 AIt would be the same mix except for that 19 there were NBA games on TNT. So I don't think we said 20 TNT when we were talking about baseball. 21 QNow, on page 5, you mention that 1998-1999 22 on WGN you could see the NBA Bulls featuring Michael</p>	<p style="text-align: right;">Page 6121</p> <p>1 acknowledged before that I don't qualify as a 2 full-scale sports fan. 3 QSo that when you talk about the NBA Bulls 4 featuring Michael Jordan -- 5 AThat was obviously inaccurate if I'm 6 speaking specifically about '98-'99. 7 QTo be fair, I mean, Michael Jordan did 8 play in 1997-1998. So at least part of 1998 is 9 covered by your statement. 10 AThat's exactly what I meant. 11 QOkay. But at least in 1998-1999, that 12 full season, and in 1999-2000, Michael Jordan had 13 retired, at least at that point, -- 14 AYet again. 15 Q-- and was not playing. Correct? 16 ASo you say. 17 QWell, just looking at this document, the 18 bottom point under "Chicago Bulls History," 1998-1999, 19 "The rebuilding begins." That would seem to suggest 20 that Michael Jordan is no longer on the Bulls at that 21 time, correct? 22 AThat appears to make sense.</p>

<p style="text-align: right;">Page 6122</p> <p>1 QAnother bit of evidence for that would be 2 you would look at the season standings. You see that 3 in 1997-1998, 62 wins, 20 losses, -- 4 AYes, it is. 5 Q-- where in 1998-1999, you see 13 wins, 37 6 losses. That is further evidence that Michael Jordan 7 is no longer on the team, correct? 8 AThat's correct. 9 QNow, were you aware that the 1998-1999 10 season was significantly shortened by an owners' 11 lockout? 12 AI was just remembering that as I looked at 13 the total number of games here. So was I aware of it? 14 At the time probably yes. I hadn't remembered it 15 until just now. 16 QDo you think the fact that there was an 17 owners' lockout and the fact that Michael Jordan was 18 no longer on the Bulls during 1998 and 1999 would have 19 affected the relative value and attractiveness of 20 Chicago Bulls programming on WGN during those years? 21 AYes, I do. 22 QNow, let's see. Do you believe that the</p>	<p style="text-align: right;">Page 6124</p> <p>1 QI guess I just understand that there are 2 going to be loyal fans. I mean, there are loyal fans 3 of the Cubs in this room who, no matter how bad the 4 Cubs do, they're going to keep watching. 5 But as a general proposition for the 6 general sports fan, would you agree with me that the 7 Chicago Bulls during the 1990 to 1992 season, when 8 they won three consecutive NBA championships with 9 Michael Jordan in his prime, that that would be more 10 attractive than the 1998-1999 season, which was 11 shortened by a strike, where the Bulls were I think 12 the worst team in the league and where Michael Jordan 13 was no longer playing, that the 1990 to '92 14 programming would have been more attractive than the 15 '98-'99 programming? 16 AYes, I will agree with you. 17 MR. DOVE: I would like to have this 18 exhibit received for impeachment purposes. 19 JUDGE von KANN: Could you remind me of 20 the number? 21 MR. DOVE: Yes, 15-X. 22 JUDGE von KANN: So received.</p>
<p style="text-align: right;">Page 6123</p> <p>1 -- well, let me represent to you -- this is also 2 evident on this document -- that during 1990 through 3 1992, the Chicago Bulls won three consecutive NBA 4 championships with Michael Jordan in his prime. Given 5 that representation, do you believe that the telecasts 6 of the Chicago Bulls on WGN during 1998 and 1999 were 7 more attractive to cable operators than were the 8 telecasts of the Chicago Bulls on WGN during 1990 to 9 '92, when the Bulls won three consecutive NBA 10 championships with Michael Jordan in his prime? 11 A You're asking me to say do I think that 12 the games are less valuable to cable operators when 13 the Bulls are losing than when they're winning? 14 Q When they're losing and when Michael 15 Jordan is no longer a part of the team. 16 A I mean, I think Michael Jordan is a major 17 sports figure with a lot of following, but I believe 18 people who are interested in watching professional 19 basketball and who are interested in the Bulls want to 20 see how they're doing and feel the pain as they lose, 21 just like they feel the glory as they win. I think 22 loyal fans feel that way.</p>	<p style="text-align: right;">Page 6125</p> <p>1 (Whereupon, the aforementioned 2 document, having previously 3 been marked for identification 4 as PTV Exhibit Number 15-X, was 5 received in evidence.) 6 BY MR. DOVE: 7 QNow, on page 5, you also mention telecasts 8 of the Cubs and the White Sox on WGN during 1998 and 9 1999. Do you see that? 10 AYes, I do. 11 QDo you believe that the telecasts of the 12 Cubs and the White Sox on WGN during 1998 and 1999 13 were more attractive to cable operators than were the 14 telecasts of the Atlanta Braves on WTBS during 1990 to 15 1992, when the Atlanta Braves went from last place to 16 first place, making it to the World Series in '91 and 17 '92? 18 AWell, I think it's hard to -- for me to 19 tell you the relative value of fans of one team versus 20 another team. The story you just described about the 21 Atlanta Braves sounds like good drama. Go from bottom 22 to the top. But in general, can I say that Braves</p>

<p style="text-align: right;">Page 6126</p> <p>1 fans are more loyal than Chicago Cubs or White Sox 2 fans? I can't make that distinction. 3 Q So you really don't have an opinion one 4 way or the other whether programming on WGN in 5 1998-1999, that the Cubs and the White Sox was more 6 valuable than programming on WTBS in 1990 to '92? You 7 don't have an opinion on that one way or the other? 8 A I think, you know, my opinion and the 9 reason I agree to it is that I remember discussing the 10 reason to carry WGN in markets or to not remove it or 11 to add it was because of the Chicago sports 12 programming and the fans and potential subscribers and 13 current subscribers who wanted to see the Chicago 14 sports programming. 15 So it was my point of view that when 16 you're talking about why -- you know, when you think 17 about the funds you pay for a distant signal, if GN is 18 that distant signal, sports is the reason to carry 19 that channel. 20 Q So let me follow up on that, then. In 21 your view, sports was the reason to carry WGN. Is 22 that correct?</p>	<p style="text-align: right;">Page 6128</p> <p>1 QContinuing on page 5, you state that in 2 1998, when WTBS converted to a cable network, WGN 3 became the most popular and widely circulated distant 4 signal. Do you see that? 5 AYes. 6 QSo prior to 1998, WTBS was the most 7 popular and widely circulated distant signal. Is that 8 correct? 9 AI believe that's true. 10 QAnd cable operators if they had to choose 11 tended to choose WTBS over WGN. Is that correct? 12 AYes, but let me say this. One of the 13 reasons is that WTBS was there first. And cable 14 operators really hate to drop programming unless 15 they're forced to because it is disruptive to 16 subscribers, who then call and get mad. So I don't 17 know that there was an active process going on. 18 I would doubt that there was an active 19 process going on on an annual basis saying, "Should we 20 take WTBS or WGN?" It was, rather, that WTBS was on 21 there. And, therefore, we were just going to keep 22 carrying it.</p>
<p style="text-align: right;">Page 6127</p> <p>1 AThat is correct. 2 QIt's not because WGN offered Xena, the 3 Warrior Princess? That's not why cable operators 4 chose to import WGN. Is that correct? 5 AThat's correct. 6 QAnd it's not because WGN has the Geraldo 7 Show on it? That's not why cable operators chose to 8 carry WGN? 9 AI'm making generalizations based on my 10 experience. Could there be a cable operator who is a 11 big Xena fan or a Geraldo fan? There could be. 12 QBut as a general rule, the reason that 13 cable operators chose WGN in your view was for the 14 sports programming, -- 15 AThat's correct. 16 Q-- not for the movies and syndicated 17 shows, correct? 18 AThat's correct. And the reason is that 19 there are a lot of movies and syndicated shows in 20 other places. So it's harder to differentiate the 21 value of those programs on one channel, such as a 22 distant signal.</p>	<p style="text-align: right;">Page 6129</p> <p>1 QBut you would agree that WTBS was a highly 2 valued signal, correct? 3 AYes. 4 QAnd so with the withdrawal of WTBS, the 5 distant signal market lost a highly valuable signal, 6 correct? 7 AThey certainly lost a wide -- yes, I guess 8 so. It lost a widely distributed channel. 9 QA few more sports-related questions, and 10 then we'll be done. 11 AYou know, if I could just make one other 12 comment? 13 QSure. 14 AMy recollection is that WTBS was not 15 carried exclusively for its sports. Did it have 16 sports content? Of course. But part of it being part 17 of the Turner Networks, they were kind of effective 18 promoters of other programming and that TBS was seen 19 as more of a general purpose channel than I recall 20 thinking of WGN. 21 QBut, again, it was a highly valuable 22 channel that cable operators carried, correct?</p>

<p style="text-align: right;">Page 6130</p> <p>1 AUh-huh. Yes.</p> <p>2 QAnd, in fact, after it was converted into</p> <p>3 a cable network, cable operators continued to carry</p> <p>4 it, correct, as a cable network?</p> <p>5 AThat's because it had been on a long time</p> <p>6 because there's tremendous cross-promotional clout in</p> <p>7 the Turner organization. And so, yes, cable operators</p> <p>8 had to keep carrying it.</p> <p>9 QIn fact, they paid to keep carrying it,</p> <p>10 correct?</p> <p>11 ACorrect, but there is a lot that goes into</p> <p>12 the decisions and the power struggle and a negotiation</p> <p>13 about why you agree to carry a channel.</p> <p>14 QNow, in your testimony, you talk about</p> <p>15 baseball being an important reason why cable operators</p> <p>16 imported distant signals. Is that correct?</p> <p>17 AI don't remember differentiating baseball</p> <p>18 specifically but talking about the Cubs and the Sox on</p> <p>19 GN.</p> <p>20 QWould you agree that baseball, the</p> <p>21 carriage of baseball games, whether it's the Chicago</p> <p>22 Cubs, the White Sox, or whoever the Chicago Cubs or</p>	<p style="text-align: right;">Page 6132</p> <p>1 newspaper article from the St. Louis Post Dispatch</p> <p>2 dated October 23, 1998 entitled "World Series Sweep is</p> <p>3 a Ratings Flop for Fox."</p> <p>4 JUDGE von KANN: 16-X?</p> <p>5 MR. DOVE: 16-X.</p> <p>6 (Whereupon, the aforementioned</p> <p>7 document was marked for</p> <p>8 identification as PTV Exhibit</p> <p>9 Number 16-X.)</p> <p>10 BY MR. DOVE:</p> <p>11 QJust take a moment to review the document.</p> <p>12 A(Perusing document.)</p> <p>13 QHave you had a chance to review the</p> <p>14 document?</p> <p>15 AYes.</p> <p>16 QI would like to direct your attention to</p> <p>17 the second paragraph, which states that, "But the</p> <p>18 season-long surge on ratings as well as attendance and</p> <p>19 interest in the sport that was fueled, in large part,</p> <p>20 by the homeland record exploits of Mark McGuire and</p> <p>21 Sammy Sosa died rapidly. This year's World Series, in</p> <p>22 which the New York Yankees swept San Diego, was the</p>
<p style="text-align: right;">Page 6131</p> <p>1 White Sox happen to be playing on a given day, that's</p> <p>2 an important reason why cable operators imported</p> <p>3 distant signals?</p> <p>4 AYes.</p> <p>5 QDo you have a sense of whether the</p> <p>6 popularity of baseball on television increased during</p> <p>7 the 1990s?</p> <p>8 AI'm sure it decreased.</p> <p>9 QYou're sure it decreased?</p> <p>10 AThat would be my guess.</p> <p>11 QLet me --</p> <p>12 AAnd I'll bet you have statistics to show.</p> <p>13 QI do have statistics to show that. Are</p> <p>14 you aware that the 1998 World Series, for example, had</p> <p>15 the lowest television rating since prime time play</p> <p>16 began in 1971?</p> <p>17 ANo, I was not aware.</p> <p>18 QAre you aware that it was estimated that</p> <p>19 Fox lost about \$15 million during that World Series?</p> <p>20 ANo, I was not aware.</p> <p>21 QI would like to hand you a document marked</p> <p>22 as Public Television exhibit 16-X, which is a</p>	<p style="text-align: right;">Page 6133</p> <p>1 lowest rated since prime time play began in 1971." Do</p> <p>2 you see that?</p> <p>3 AYes, I do.</p> <p>4 QDo you have any reason to dispute those</p> <p>5 numbers?</p> <p>6 ANo.</p> <p>7 QTurn to the third paragraph. It states</p> <p>8 that, "The series broadcast by Fox finished with an</p> <p>9 average Nielsen media research figure of 14.1, meaning</p> <p>10 14.1 percent of the nation's homes with TVs tuned in</p> <p>11 on average to the telecast. That was 14 percent below</p> <p>12 the previous low, 16.4, for the 1989 Oakland-San</p> <p>13 Francisco affair that was halted for 12 days because</p> <p>14 of an earthquake, leading to a decline in interest</p> <p>15 because of the lack of continuity."</p> <p>16 Do you have any reason to dispute the</p> <p>17 assertions made in this paragraph?</p> <p>18 ANo, I do not.</p> <p>19 QI would like to direct your attention to</p> <p>20 the next paragraph, which states that "Estimates are</p> <p>21 that Fox lost about \$15 million because of the sweep.</p> <p>22 It must offer free commercials to advertisers, who are</p>

<p style="text-align: right;">Page 6134</p> <p>1 promised a bigger audience. Fox's break-even point 2 was five games." Do you see that? 3 AYes, I do. 4 QDo you have any reason to dispute the 5 assertions in that paragraph? 6 ANo, I do not. 7 QThe next paragraph states that "The series 8 rating slide is pronounced. On the list of poorest 9 rated series, eight have been in the past ten years. 10 Last season's Florida-Cleveland pairing was the lowest 11 rated non-interrupted series and would have been the 12 worst overall if not for a strong game seven." Do you 13 see that? 14 AYes, I do. 15 QDo you have any reasons to doubt the 16 assertions in that paragraph? 17 ANo, I do not. 18 QSo based on these assertions, would you 19 agree that the television ratings for the World -- 20 strike that question. 21 MR. DOVE: I would like to have this 22 document received in evidence for impeachment</p>	<p style="text-align: right;">Page 6136</p> <p>1 THE WITNESS: (Perusing document.) 2 BY MR. DOVE: 3 QHave you had a chance to review this 4 document, Ms. Allen? 5 AYes. 6 QWould you please read what the television 7 rating was for the World Series in 1990? 8 MR. COOPER: I don't know how much longer 9 this is going on, but I object. This is cumulative. 10 We just had a reading, a dramatic reading, of ratings 11 for the World Series. 12 JUDGE von KANN: Well, it does seem a bit. 13 Is there something new or different about this aspect 14 of it? 15 MR. DOVE: If the witness is willing to 16 concede that the ratings for the World Series have 17 declined between the 1990 to 1992 period and the 1998 18 and 1998 period, I would be happy to end this line of 19 questioning. 20 THE WITNESS: Well, I would be willing to 21 concede it with an important caveat about what was 22 going on in terms of programming choices. We already</p>
<p style="text-align: right;">Page 6135</p> <p>1 purposes. 2 MR. COOPER: It has been a while, but 3 we're letting in -- I think I have no objection as I 4 recall our impeachment interpretations. 5 JUDGE von KANN: It's very broad. 6 MR. COOPER: Yes. 7 JUDGE von KANN: Okay. So received. 8 (Whereupon, the aforementioned 9 document, having previously 10 been marked for identification 11 as PTV Exhibit Number 16-X, was 12 received in evidence.) 13 BY MR. DOVE: 14 QI would now like to show you a document 15 that has been marked as Public Television Exhibit 16 17-X, which is a television analysis and ratings 17 breakdown for the World Series published by Baseball 18 Almanac. 19 (Whereupon, the aforementioned 20 document was marked for 21 identification as PTV Exhibit 22 Number 17-X.</p>	<p style="text-align: right;">Page 6137</p> <p>1 -- and I think you asked in your questioning how many 2 channels there were available. 3 There was a great increase in cable, video 4 offerings. There was satellite television offered in 5 the -- during the late 1990s and incredible 6 fragmentation in the viewing audience for all 7 categories of programming. 8 So all overall ratings declined. And I 9 would say sports declined along with it but probably 10 less so than most other or all other categories. So 11 sports still had an ability to gather a large 12 audience; whereas, all movies, syndicated, news, 13 everything is feeling, all categories are feeling the 14 fragmentation of the proliferation of viewing choices. 15 But I don't dispute your facts that are in 16 front of me. 17 BY MR. DOVE: 18 QYou don't dispute the fact that ratings 19 for the World Series and for baseball generally 20 declined during the 1990s. Is that a fair statement? 21 AThat is a fair statement, but I just think 22 ratings in general for typical, you know, programming</p>

<p style="text-align: right;">Page 6138</p> <p>1 that had been around for a long time has been 2 declining. Ratings for the three or four primary 3 broadcast networks has been declining relative to 4 cable programming. I mean, there is a huge change in 5 viewership due to the fragmentation of offerings 6 that's been going on in the 1990s and continuing. 7 MR. DOVE: I would just ask this, that PTV 8 exhibit 17 be received for impeachment purposes. And 9 with that, I would have no further questions. 10 MR. COOPER: No objection. 11 JUDGE von KANN: All right. So received. 12 (Whereupon, the aforementioned 13 document, having previously 14 been marked for identification 15 as PTV Exhibit Number 17-X, was 16 received in evidence.) 17 JUDGE YOUNG: When you said "the 18 fragmentation of viewing," are you saying I as a 19 viewer can watch baseball on a variety of other ways 20 or I have a lot of other options on baseball options? 21 THE WITNESS: I meant the latter. 22 JUDGE YOUNG: That I had other viewing</p>	<p style="text-align: right;">Page 6140</p> <p>1 In 1968, there weren't a lot of other 2 choices. So more people watched the major events. 3 There are still major events that many people watch, 4 but there are so many other choices that people 5 choose. 6 There's some -- there's fragmentation, and 7 people choose other things. That's what I was saying. 8 JUDGE YOUNG: Now, a few minutes ago, you 9 answered a question of Mr. Dove. I think I wrote it 10 down, where you said the popularity of baseball has 11 decreased during the '90s. Did you mean the 12 popularity of baseball as a sport or did you mean 13 ratings? 14 THE WITNESS: I recall reading some issues 15 that -- let's see. I mean, that I think there might 16 have been issues about whether enough people were 17 going to stadiums. I didn't have -- 18 JUDGE YOUNG: More generally than just 19 ratings? 20 THE WITNESS: I think that's what I was 21 referring to, yes. 22 JUDGE YOUNG: Well, you can tell me what</p>
<p style="text-align: right;">Page 6139</p> <p>1 options? I could watch movies? I could watch other 2 sports? 3 THE WITNESS: I just mean over the time in 4 the development of cable television and satellite 5 television, there are lots more channels than there 6 were. So there's lot of places to get movies or 7 syndicated or sports or children's programming or 8 educational programming. 9 There used to be just single sources of 10 these things. And now there's lots of choices. 11 JUDGE YOUNG: If I'm looking at exhibit 12 17-X, you're not saying I can see the World Series -- 13 THE WITNESS: No. 14 JUDGE YOUNG: -- on other ways? I can see 15 other things? 16 THE WITNESS: No, but I think what I was 17 trying to say is that if you used other major events, 18 one-time events, like the World Series. I don't have 19 the statistics. This is my general understanding. If 20 you did the Academy Awards, then from 1968 to today, 21 we will observe a decline in overall ratings because 22 of the proliferation of offerings.</p>	<p style="text-align: right;">Page 6141</p> <p>1 you were referring to. 2 THE WITNESS: Yeah, that's what I was 3 afraid of. 4 JUDGE von KANN: Okay. Thank you, Mr. 5 Dove. I guess Mr. Mause. 6 MR. COOPER: Can we get an estimate on -- 7 JUDGE von KANN: Not much, I suspect. 8 MR. MAUSE: Five to ten minutes. 9 JUDGE von KANN: Okay. Why don't we take 10 this. Then we'll take a break. 11 MR. MAUSE: Good afternoon. My name is 12 Phil Mause. I represent the Music Claimants. 13 CROSS-EXAMINATION 14 BY MR. MAUSE: 15 QI want to pick up on exhibit 17-X. I 16 recognize you're not a sports fan, but you discussed 17 the decline in ratings of the World Series. Do you 18 know whether the World Series has a half-time show 19 featuring music? 20 AIt is a trick question. There is no 21 half-time in baseball. 22 QI'll withdraw the question.</p>

<p style="text-align: right;">Page 6142</p> <p>1 AThere's a seven-inning stretch.</p> <p>2 QJust a couple of questions about</p> <p>3 retransmission. You testified concerning</p> <p>4 retransmission consent. And, as I understand, that</p> <p>5 applies to distant signals?</p> <p>6 AYes.</p> <p>7 QWhat that means is that the broadcaster</p> <p>8 whose signal a cable operator wants to carry has to</p> <p>9 give his consent before the cable operator can carry</p> <p>10 the signal?</p> <p>11 AThat's correct.</p> <p>12 QThe broadcaster can, theoretically at</p> <p>13 least, demand as consideration for that consent the</p> <p>14 payment of some kind of money or other consideration?</p> <p>15 AThat's correct.</p> <p>16 QThat payment is apart from any payment</p> <p>17 into this royalty fund that the cable operator would</p> <p>18 make?</p> <p>19 AThat's correct. It's designed to be a</p> <p>20 contractual agreement between the broadcaster and the</p> <p>21 cable company.</p> <p>22 QSo, at least theoretically -- because one</p>	<p style="text-align: right;">Page 6144</p> <p>1 QWell, let's say you were asked, could you</p> <p>2 tell us what signals would be carried in '98-'99 if</p> <p>3 there were no compulsory licensing, no minimum</p> <p>4 payments that had to be made into this royalty pool,</p> <p>5 but we had a kind of free-for-all in which all of the</p> <p>6 different rights holders could seek to get payments</p> <p>7 from the cable operators or from somebody else for</p> <p>8 their programming in order to understand what that</p> <p>9 market would look like in '98-'99 --</p> <p>10 AI would look at what it looked like the</p> <p>11 year before or the two years before. Yeah, that makes</p> <p>12 sense.</p> <p>13 QBecause then you would see whether the</p> <p>14 cable operators had right up to the date at which this</p> <p>15 started had been carrying these signals or had been</p> <p>16 doing something else?</p> <p>17 ARight.</p> <p>18 QAnd that would have a big effect on the</p> <p>19 value of the signals to them in '98-'99?</p> <p>20 AI think that's correct.</p> <p>21 QAnother thing you mentioned was</p> <p>22 advertising revenue and distant signals. You</p>
<p style="text-align: right;">Page 6143</p> <p>1 question we have had is why would a cable operator not</p> <p>2 carry any distant signals, I guess theoretically one</p> <p>3 possibility is that he tried to carry them, but the</p> <p>4 broadcasters whose signal there was asked an amount of</p> <p>5 money for the consent that the cable operator was not</p> <p>6 willing to pay.</p> <p>7 AI don't know of any examples of that, but</p> <p>8 theoretically that is possible.</p> <p>9 QNow, you mentioned that you don't like to</p> <p>10 take off programming. I think at another point, you</p> <p>11 said you hated to drop programming. So, as I</p> <p>12 understand it, once you're carrying a signal, there is</p> <p>13 considerable reluctance to drop the signal?</p> <p>14 AThat's correct.</p> <p>15 QAnd so if you, again for some reason, want</p> <p>16 to look at what would happen in this market if there</p> <p>17 were no compulsory licensing and no minimum fees, what</p> <p>18 would happen in any time period, like '98-'99, it</p> <p>19 would be important to know what happened in the</p> <p>20 immediately preceding time period, wouldn't it?</p> <p>21 AI think so. I'm not sure I totally follow</p> <p>22 you. Can you restate the question?</p>	<p style="text-align: right;">Page 6145</p> <p>1 indicated -- and, again, please correct me if I am</p> <p>2 wrong -- that for some kinds of programming or</p> <p>3 signals, cable operators see a certain value in the</p> <p>4 fact that they can place advertising on the signal?</p> <p>5 AThat's correct.</p> <p>6 QAnd so they can sell the advertising and</p> <p>7 get revenue from advertisers?</p> <p>8 ACorrect.</p> <p>9 QBut that's not true in this market?</p> <p>10 AThat's correct.</p> <p>11 QAnd is that because all of this</p> <p>12 programming in this market has embedded advertising</p> <p>13 that the cable operator has to carry as a condition of</p> <p>14 carrying the signal?</p> <p>15 AYes, and it's just -- yes. It's not</p> <p>16 technically set up for us to have local availabilities</p> <p>17 in the way that many satellite-carried national cable</p> <p>18 networks are set up that way.</p> <p>19 QSo if you wanted to compare the value of</p> <p>20 this entire pool of programming to cable operators</p> <p>21 with the value of some other pool of programming, that</p> <p>22 inability of the cable operator to get advertising</p>

<p style="text-align: right;">Page 6146</p> <p>1 revenue might be relevant?</p> <p>2 AIn terms of the overall value of distant</p> <p>3 signals versus cable channels?</p> <p>4 QRight.</p> <p>5 AOkay. Yes, I'll agree.</p> <p>6 JUDGE GULIN: Do you have a sense as to</p> <p>7 what percentage cable operators derive, what</p> <p>8 percentage of their income is derived from these</p> <p>9 avails?</p> <p>10 THE WITNESS: You know, I don't know that</p> <p>11 number exactly, but I think it's in the range of five</p> <p>12 percent, and it's been growing. It's been growing</p> <p>13 partially due to some of that geographic consolidation</p> <p>14 that I described before where companies were swapping</p> <p>15 systems so that they then had a more consolidated</p> <p>16 offering, which made them able to aggregate viewership</p> <p>17 much more closely resembling the way a local</p> <p>18 broadcaster aggregates viewership.</p> <p>19 So that over time, it has been a growing</p> <p>20 number, but I don't know exactly what number it is</p> <p>21 now.</p> <p>22 JUDGE GULIN: It's in that five percent</p>	<p style="text-align: right;">Page 6148</p> <p>1 extraneous things that go into the mix of such</p> <p>2 negotiations?</p> <p>3 AIt depends on who you are negotiating</p> <p>4 with. There are some independent channels who you</p> <p>5 would just have a solo negotiation on that particular</p> <p>6 channel.</p> <p>7 But at the same time, there has been</p> <p>8 consolidation over the '90s in the cable operating</p> <p>9 side of the business. There has been consolidation on</p> <p>10 the programming side of the business.</p> <p>11 So many of the major networks are owned by</p> <p>12 the same company. So there are -- many of the cable</p> <p>13 networks, not broadcast networks, cable networks. So</p> <p>14 there is the Viacom channels and the Disney ESPN</p> <p>15 channels and the Turner AOL channels.</p> <p>16 So there's families where they can</p> <p>17 absolutely use leverage of a strong channel that you</p> <p>18 want to keep carrying in order to entice you/force you</p> <p>19 to start carrying some other channel they want you to</p> <p>20 carry and the like.</p> <p>21 QSo they might say you can carry this</p> <p>22 channel at this price if you also agree to carry this</p>
<p style="text-align: right;">Page 6147</p> <p>1 range, then. If I wanted to get an accurate view of</p> <p>2 what a cable operator paid for it to carry a cable</p> <p>3 network, I should deduct about five percent from that</p> <p>4 to find out what he really paid?</p> <p>5 THE WITNESS: Well, there are different</p> <p>6 buckets in terms of the way cable operators actually</p> <p>7 keep their financials. And so it's never done as an</p> <p>8 offset. So what you are describing is theoretical.</p> <p>9 So theoretically you carry a channel that</p> <p>10 you can sell advertising on, and you are able -- and</p> <p>11 should you offset that cost? I mean, theoretically</p> <p>12 you could, but it's not done in terms of the way the</p> <p>13 economics are measured or reported at all in the cable</p> <p>14 industry.</p> <p>15 BY MR. MAUSE:</p> <p>16 QI guess one other point is you mentioned</p> <p>17 that these negotiations to take different signals or</p> <p>18 cable networks are quite complicated.</p> <p>19 AYes.</p> <p>20 QIs it the case that there is often</p> <p>21 something other than simply a price paid to take one</p> <p>22 network but agreements to take other signals and other</p>	<p style="text-align: right;">Page 6149</p> <p>1 other channel for X number of years?</p> <p>2 AThat's correct.</p> <p>3 JUDGE YOUNG: Did you say earlier in</p> <p>4 response to a question from Mr. Stewart that in</p> <p>5 retransmission negotiations, there may be a situation</p> <p>6 where to get a local signal, you as a cable operator</p> <p>7 have to carry a distant signal, particular distant</p> <p>8 signal, that maybe a broadcast network would want you</p> <p>9 to do or something?</p> <p>10 THE WITNESS: I don't recall that</p> <p>11 situation that to get a local, you would have to carry</p> <p>12 a distant. I don't recall that. What did happen in</p> <p>13 the mid 1990s or early 1990s when retransmission</p> <p>14 consent first happened, I guess '93-'94, the major</p> <p>15 network groups negotiated on behalf of their owned and</p> <p>16 operated stations and created cable channels that they</p> <p>17 asked us to carry.</p> <p>18 So if you wanted to carry KNBC in Los</p> <p>19 Angeles, you needed to agree to carry America's</p> <p>20 Talking, which was a new --</p> <p>21 JUDGE YOUNG: On the cable network?</p> <p>22 THE WITNESS: It was a cable network.</p>

<p style="text-align: right;">Page 6150</p> <p>1 JUDGE YOUNG: Okay.</p> <p>2 THE WITNESS: So I have no recollection</p> <p>3 ever of a local asking for a distant, but groups of</p> <p>4 local stations did ask us to carry cable channels.</p> <p>5 MR. MAUSE: That is all I have.</p> <p>6 JUDGE YOUNG: Actually, I have one more</p> <p>7 since now I have the floor for a second. I thought in</p> <p>8 response to a question of Mr. Dove, you were asked,</p> <p>9 "If I want to see the Cubs, what are the other options</p> <p>10 to see the Cubs?"</p> <p>11 THE WITNESS: Yes.</p> <p>12 JUDGE YOUNG: And I thought you said</p> <p>13 something that I guess if I'm a viewer, I could see it</p> <p>14 as a distant signal on a cable. I thought you said</p> <p>15 you might also be able to see it as a local signal.</p> <p>16 THE WITNESS: Well, I am not familiar with</p> <p>17 the details of the Cubs broadcast package, but they</p> <p>18 tend to take their games -- most teams tend to</p> <p>19 negotiate rights for their games in different</p> <p>20 packages. So some of their games probably appear on</p> <p>21 a local television station in Chicago. Some of their</p> <p>22 games started with GN.</p>	<p style="text-align: right;">Page 6152</p> <p>1 JUDGE YOUNG: Okay. Thanks.</p> <p>2 JUDGE von KANN: Thank you. Mr.</p> <p>3 Satterfield, anything?</p> <p>4 (No response.)</p> <p>5 JUDGE von KANN: Why don't we take 15</p> <p>6 minutes? Then you can come back and have redirect.</p> <p>7 (Whereupon, the foregoing matter went off</p> <p>8 the record at 5:03 p.m. and went back on</p> <p>9 the record at 5:20 p.m.)</p> <p>10 JUDGE von KANN: Mr. Cooper?</p> <p>11 MR. COOPER: Thank you, Your Honor.</p> <p>12 REDIRECT EXAMINATION</p> <p>13 BY MR. COOPER:</p> <p>14 QMs. Allen, if you could, do you have your</p> <p>15 Joint Sports case in front of you?</p> <p>16 AUh-huh.</p> <p>17 QIf you could turn to the Bortz report,</p> <p>18 which is behind? There you go. And if you look at</p> <p>19 page 6?</p> <p>20 ASix, the actual report? Okay.</p> <p>21 QYes. I just want to direct your attention</p> <p>22 to the table there that has the Bortz results for 1990</p>
<p style="text-align: right;">Page 6151</p> <p>1 JUDGE YOUNG: If I am getting it on a</p> <p>2 distant signal, which means probably I'm not in</p> <p>3 Chicago, I'm somewhere else picking up WGN as a</p> <p>4 distant signal, correct?</p> <p>5 THE WITNESS: Okay.</p> <p>6 JUDGE YOUNG: So under those</p> <p>7 circumstances, I would think it's unlikely that I</p> <p>8 would see it as a local signal where I am.</p> <p>9 THE WITNESS: Right. I thought Mr. Dove</p> <p>10 was asking all the variety of places Cubs games might</p> <p>11 appear. But to your point, when you were specifying</p> <p>12 the distant signal aspect, which means you don't live</p> <p>13 in Chicago, then you're correct. It would be GN or</p> <p>14 some of the other cable or broadcast networks that</p> <p>15 carried --</p> <p>16 JUDGE YOUNG: I could conceivably see it</p> <p>17 on a national network that may have a game of the</p> <p>18 week?</p> <p>19 THE WITNESS: Right.</p> <p>20 JUDGE YOUNG: And I might be able to see</p> <p>21 it on -- I think ESPN has a game of the week?</p> <p>22 THE WITNESS: Right.</p>	<p style="text-align: right;">Page 6153</p> <p>1 through '92 and '98 through '99. Do you see that?</p> <p>2 AYes.</p> <p>3 QDo you see, just focusing first on the</p> <p>4 live professional college and team sports line, which</p> <p>5 is the first line in that chart, --</p> <p>6 AYes.</p> <p>7 Q-- that the results in 1990 through '92</p> <p>8 are36.3 percent to 38.8 percent and in '98 to '99,</p> <p>9 they're 37 percent to 38.8 percent, roughly sort of</p> <p>10 the same levels? Do you see those numbers?</p> <p>11 AYes, I do.</p> <p>12 QDo you have any view as to why those</p> <p>13 numbers might be the same, notwithstanding changes in</p> <p>14 the marketplace over the years?</p> <p>15 AWell, I think my view goes back to what we</p> <p>16 were talking about before about the fragmentation of</p> <p>17 audience. I think in all of the categories that are</p> <p>18 being discussed here as being carried on distant</p> <p>19 signals, there were more options for all of these</p> <p>20 categories to be found in various cable channels,</p> <p>21 satellite channels, and other viewing places.</p> <p>22 So I guess my feeling is that sports</p>

<p style="text-align: right;">Page 6154</p> <p>1 continued to have a really strong relative value while 2 everything was shifting. I don't know if I am 3 explaining that exactly right. 4 QAnd then -- 5 AAnd then if I can just add, let me make -- 6 there are still -- I know we tend to overuse the word 7 "unique." So I apologize for not having a better 8 word. 9 But there is something about live sports 10 that cannot be replicated. A particular game at a 11 particular time on a particular channel is not 12 available anywhere else. 13 And that is a little bit different than if 14 you feel like watching a sitcom or you feel like 15 watching a movie. I think those -- nothing against 16 sitcoms or movies, but those are more substitutable 17 categories than you wanting to watch a particular game 18 which is only available in one place at one time. 19 JUDGE von KANN: But not different, I 20 would have thought, than the Academy Awards or the 21 State of the Union address? 22 THE WITNESS: Well, and I think that those</p>	<p style="text-align: right;">Page 6156</p> <p>1 Can you discuss why in your view the 2 sports result is consistent with that PBS result, why 3 there's the disparity there? 4 AWell, you know, I like PBS, but I think 5 PBS needs -- a cable operator's needs for PBS are met 6 by the local PBS. So I think in terms of needs for an 7 incremental or a distant signal PBS, I think the PBS 8 needs, if you will, are just met by the local signal 9 already. I think that is one. 10 I think the other thing is some of the 11 categories of programming that PBS is known for have 12 now been duplicated as part of this overall 13 proliferation of channels. And certainly there are 14 other sources now for documentaries, for news or talk 15 shows, for high-quality drama, for history, for 16 documentaries, for children's programming. 17 QAre there differences in the use for those 18 types of programming? 19 AYes. And I find this an unfortunate but 20 real fact. And this goes back to the fact that as a 21 programmer and I wasn't a sports fan, you have to make 22 decisions that are going to attract the widest number</p>
<p style="text-align: right;">Page 6155</p> <p>1 are, probably more the former than the latter, still 2 large audience gatherers, but overall statistically -- 3 that's what I was trying to make the point on the 4 World Series -- overall statistically still lower than 5 they were in the 1960s because of the proliferation of 6 choices. 7 So there are still some events that gather 8 large audiences, without question. 9 BY MR. COOPER: 10 Q And if you look down to the next to last 11 line in the table there, table 1-2, and across, that's 12 the line for PBS and all other programming on 13 noncommercial signals. And you look across the 14 '98-'99. You will see that the results for '98-'99 15 are 2.9 percent from the cable operators who are 16 surveyed. 17 I will represent to you that there has 18 been some testimony in this proceeding that for 19 systems that carried a PBS, that number was about 12 20 percent of the value allocation but that as a 21 consequence of a quarter of the systems carrying a 22 PBS, the result becomes a 3 percent.</p>	<p style="text-align: right;">Page 6157</p> <p>1 of subscribers and potential subscribers. 2 People who are very big fans of PBS are a 3 category of cable resisters in my experience, that 4 there is a category of viewer who likes noncommercial 5 television and wants to limit their viewing to what 6 they perceive as high-quality viewing. 7 And, therefore, they are not a good 8 target, again, much to my marketing hat chagrin, for 9 purchasing a larger package of many more choices of 10 cable channels in a cable television subscription. 11 QAnd so what effect, if any, would you 12 expect that to have on the responses that cable 13 operators would give as they're allocating relative 14 value to distant signal programming types? 15 AWell, you'd put value on the programming 16 that you think is helping to attract and retain 17 subscribers. 18 QMr. Dove asked you some questions about 19 World Series ratings. And, in particular, he focused 20 in this article, which I like and I want to spend some 21 more time on, on the World Series broadcast by Fox. 22 That was PTV exhibit 16-X. Do you have that?</p>

<p style="text-align: right;">Page 6158</p> <p>1 AYes, I do.</p> <p>2 QIn those situations where a cable operator</p> <p>3 would only be broadcasting or carrying the World</p> <p>4 Series by virtue of a distant Fox; in other words,</p> <p>5 they don't have a local Fox, so they're importing a</p> <p>6 distant Fox, would it be important to them to be able</p> <p>7 to carry the World Series?</p> <p>8 AAbsolutely. That would be a marketable,</p> <p>9 important piece of programming.</p> <p>10 QWould that be true, notwithstanding</p> <p>11 whether there had been some ratings decline from 1968?</p> <p>12 AThat would absolutely be true. To the</p> <p>13 point of the State of the Union and the Academy</p> <p>14 Awards, there are certain television events that you</p> <p>15 want to have available to your consumers, important.</p> <p>16 QWhen Mr. Dove was reading to you from</p> <p>17 exhibit 16-X, he stopped right at the best part. And</p> <p>18 that was the paragraph that says, "The McGwire and</p> <p>19 Sosa-driven frenzy led to ratings increases in the</p> <p>20 regular season. And the game in which McGwire broke</p> <p>21 Roger Maris' single season homer record was the best</p> <p>22 rated regular season contest on national TV in 16</p>	<p style="text-align: right;">Page 6160</p> <p>1 anticipation that he would hit another later in the</p> <p>2 game would keep you riveted."</p> <p>3 Do you recall that home run race?</p> <p>4 AI do.</p> <p>5 QWould that kind of thing have been of</p> <p>6 importance to you in your programming life, making</p> <p>7 programming decisions?</p> <p>8 AWell, it would certainly be a reason to</p> <p>9 promote that you have WGN, to not consider taking off</p> <p>10 WGN under any circumstances, and to possibly consider</p> <p>11 adding WGN, although the nature of the way we pay</p> <p>12 six-month copyright payments means you don't make</p> <p>13 these decisions on an ad hoc Thursday afternoon.</p> <p>14 So I don't know that anybody said, "Wow.</p> <p>15 It's exciting. Let's put this on," but I could</p> <p>16 certainly understand why they would, because of the</p> <p>17 importance of that.</p> <p>18 MR. COOPER: Thank you. I have nothing</p> <p>19 further.</p> <p>20 JUDGE von KANN: Anything else from</p> <p>21 anyone?</p> <p>22 (No response.)</p>
<p style="text-align: right;">Page 6159</p> <p>1 years." Do you see that paragraph?</p> <p>2 AI do.</p> <p>3 QDo you know whether those games were</p> <p>4 carried on WGN?</p> <p>5 AThey were, it's my understanding.</p> <p>6 QAnd I take it he asked you whether you had</p> <p>7 any information to contradict these paragraphs. Do</p> <p>8 you have any information to contradict that?</p> <p>9 ANo, I don't. I just think, frankly, that</p> <p>10 paragraph that you just quoted reinforces my testimony</p> <p>11 that sports is owed the -- it is the category here</p> <p>12 that deserves the most -- that is perceived as the</p> <p>13 highest in terms of value in this hypothetical</p> <p>14 marketplace that we're struggling with here.</p> <p>15 QThe third to the bottom paragraph and the</p> <p>16 second to the bottom, I wanted to read those, too.</p> <p>17 They have quote marks around them, "Fans were agog</p> <p>18 about McGwire and Sosa because of the sense of</p> <p>19 anticipation that each game promised. If you weren't</p> <p>20 a St. Louis or Chicago fan, you cared only about when</p> <p>21 each man would hit his next home run. So even if one</p> <p>22 man hit a home run in the first inning, the</p>	<p style="text-align: right;">Page 6161</p> <p>1 JUDGE von KANN: Okay. Ms. Allen, thank</p> <p>2 you. You are excused.</p> <p>3 (Whereupon, the witness was excused.)</p> <p>4 JUDGE von KANN: And unless anyone has</p> <p>5 anything else, we're adjourned until 9:30 Monday</p> <p>6 morning. Have a good weekend.</p> <p>7 (Whereupon, at 5:30 p.m., the foregoing</p> <p>8 matter was recessed, to reconvene at 9:30</p> <p>9 a.m. on Monday, June 2, 2003.)</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p>

Certificate of Service

I hereby certify that on Monday, February 12, 2018 I provided a true and correct copy of the Judith Allen Direct Oral Testimony (JSC Written Direct Statement Vol. III) to the following:

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Signed: /s/ Michael E Kientzle